Petition

81-1506

No. 81-

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In the Supreme Court of the United States

OCTOBER TERM, 1981

FEDERAL ELECTION COMMISSION, ET AL., PETITIONERS,

v.

NATIONAL RIGHT TO WORK COMMITTEE, ET AL., RESPONDENTS.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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FEBRUARY 10, 1982

QUESTION PRESENTED

Whether the court of appeals erred in holding that a corporation, which uses corporate money to establish and administer a separate segregated political fund and to finance solicitations to such a fund, cannot be limited by Congress to directing such solicitations to its members, but rather must be permitted to solicit any individual who has contributed money to the corporation and responded to the corporation's questionnaires.*

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* The other named parties to this proceeding are:

The Employee Rights Campaign Committee; Henry L. Walther and Harold P. Ketelhut. Named as other petitioners are: Stanley J. Kimmett, Secretary of the United States Senate and Ex-Officio member of the Federal Election Commission; Edmund L. Henshaw, Jr., Clerk of the United States House of Representatives and Ex-Officio member of the Federal Election Commission; Vernon W. Thomson, Thomas E. Harris, Robert O. Tiernan, Neil Staebler, William Springer and Joan D. Aikens as members of the Commission; and Griffin Bell as Attorney General of the United States. Messrs. Thomson, Tiernan, Staebler and Springer are no longer Commission members; Messrs. John Warren McGarry, Frank P. Reiche, Danny Lee McDonald and Ms. Lee Ann Elliott are currently members of the Commission. William F. Hildenbrand is currently the Secretary of the Senate and Ex-Officio member of the Commission, rather than Stanley J. Kimmett; William French Smith is currently Attorney General.

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FEDERAL ELECTION COMMISSION, ET AL., PETITIONERS,

v.

NATIONAL RIGHT TO WORK COMMITTEE, ET AL., RESPONDENTS.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

The Federal Election Commission ("FEC" or "Commission") respectfully petitions this Court for a *writ of certiorari* to review the judgment of the United States Court of Appeals for the District of Columbia Circuit in *National Right to Work Committee, Inc. et al,* v. *Federal Election Commission, et al.,* —— F.2d ——, 2 Fed. Elec. Camp. Fin. Guide (CCH) ¶ 9159 (D.C. Cir. September 4, 1981).

OPINIONS BELOW

The September 4, 1981 decision of a panel of the court of appeals reversing the district court's opinion is not yet officially reported and appears at Appendix ("App.") A. The November 13, 1981 orders of the court of appeals denying the Commission's petition for rehearing and suggestion for rehearing *en*

banc by an evenly divided court are unreported and appear at App. B. The April 24, 1980 decision of the United States District Court for the District of Columbia granting the Commission's motion for summary judgment is published at 501 F. Supp. 422 (D.D.C. 1980) and appears at App. C.

JURISDICTION

The judgment of the court of appeals was entered September 4, 1981. A petition for rehearing and suggestion for rehearing *en banc* was denied November 13, 1981. The jurisdiction of this Court is conferred by 28 U.S.C. § 1254(1) (1980).

STATUTES INVOLVED

This case concerns provisions of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. §§ 431 *et seq.* ("FECA" or "the Act"),[1] specifically 2 U.S.C. § 441b(b)(4)(A), (B), and (C). For the Court's convenience, 2 U.S.C. § 441b is set forth in its entirety at App. D.

STATEMENT OF THE CASE

Background

The National Right to Work Committee, Inc. ("NRWC") is a nonprofit corporation without capital

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[1] The Federal Election Campaign Act of 1971 (the "Act" or "FECA"), Pub. L. No. 92-225, 86 Stat. 3 (1972) was amended by the Federal Election Campaign Act Amendments of 1974, Pub. L. No. 93-443, 88 Stat. 1263 (1974), by the Federal Election Campaign Act Amendments of 1976, Pub. L. No. 94-283, 90 Stat. 475 (1976), by the Federal Election Campaign Act Amendments of 1977, Title V, Sec. 502, Pub. L. No. 95-216, 91 Stat. 1655 (1977), and by the Federal Election Campaign Act Amendments of 1979, Pub. L. No. 96-187, 93 Stat. 1339 (1980).

stock which is incorporated under the laws of the Commonwealth of Virginia. NRWC was first incorporated in 1960 in the District of Columbia as a nonprofit corporation and its first articles of incorporation made no mention of members or membership. In 1975, NRWC filed a Statement of Election with the District of Columbia and specifically stated therein that it had no members. NRWC merged with a Virginia corporation in 1975 and articles of merger filed in the District of Columbia again stated that neither corporation had members and that NRWC, the surviving corporation, "shall not have members." Later in 1975, NRWC incorporated in the State of Virginia as a nonprofit corporation without capital stock and once again its articles of incorporation, specifically Article 7, stated that it "shall not have members."[2] In addition, by-laws adopted by NRWC's board of directors make no reference to members, to membership in NRWC or to any membership rights to be accorded any such class of persons.

NRWC established and financially maintains a separate segregated fund, the Employee Rights Campaign Committee ("ERCC"). Section 441b(b)(4) of Title 2 permits any corporation or labor organiza-

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[2] For the years 1971 through 1974, NRWC filed the required "Internal Revenue Service Form 990, Exempt from Income Tax Statement", wherein it left blank or placed "N/A" in the space allowed for membership organizations to enter the amount allocated for political purposes. When questioned regarding this response at depositions taken in *UAW* v. *National Right to Work Legal Defense and Education Foundation*, (D.D.C. No. 839-73), NRWC President Reed Larson stated that the question was left unanswered for two reasons: first, because NRWC did not have any political expenditures, and second, because NRWC was not a membership organization. *See* Joint Stipulations of Fact, Court of Appeals Joint Appendix at 168-170; App. C at 17a-18a.

tion to use unlimited general treasury funds to finance and administer a political committee, rather than being limited to a $5,000 contribution to its committee under 2 U.S.C. § 441a(a)(1)(C) as are other types of organizations. Section 441b(b)(4), however, limits a corporation which establishes and finances such a political committee to soliciting contributions to its committee only from its stockholders, executive and administrative personnel, and their families, and in the case of a membership corporation, its members.

In 1975, NRWC solicited contributions to its separate segregated fund from 276,123 individuals who had at one time contributed money to NRWC and responded to a questionnaire.[3] On October 21, 1976, the Commission received a complaint alleging that NRWC and ERCC had violated 2 U.S.C. § 441b(b)(4)(A) by soliciting contributions to ERCC from persons other than NRWC's stockholders, executive and administrative personnel and their families.[4] Although its corporate documents state that it shall not have members, NRWC asserted that it considered those persons who had contributed money to the corporation and responded to a questionnaire to be mem-

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[3] NRWC conducts mailings of letters and questionnaires directed at the general public. Neither the questionnaires, letters nor any other materials state that NRWC will consider those persons who respond to the questionnaire and/or return a contribution to the corporation to be its "members." Indeed, NRWC does not have any written criteria or objective standard by which to determine what questionnaire responses qualify the individual for membership.

[4] NRWC and ERCC conceded that all persons solicited by the corporation were neither stockholders nor executive or administrative personnel in NRWC nor the families of such persons. App. C at 22a-23a.

bers of NRWC for purposes of § 441b(b)(4)(C). Pursuant to § 437g (1976), the Commission sought to resolve the matter through voluntary compliance. Unable to reach a satisfactory conciliation, the Commission found probable cause to believe that NRWC and ERCC had violated 2 U.S.C. § 441b(b)(4)(A)(i) and authorized the filing of a civil action to enforce § 441b. The Commission notified NRWC and ERCC of its decision by letter dated October 11, 1977.

Proceedings Before the District Court

The district court found that NRWC had violated § 441b and granted the FEC's motion for summary judgment. The court concluded that "the limited exception allowing corporations without capital stock to solicit their members for contributions [§ 441b(b)(4)(C)] is not unconstitutionally vague, . . . the limits on corporate solicitation do not violate the rights to free speech and association secured by the First Amendment" and that "NRWC and ERCC . . . violated the [FECA] by soliciting contributions from persons who were not members of NRWC." App. C at 53a. The court found that "NRWC has no members and cannot bring itself within the membership exception," and noted that "to permit NRWC to solicit more broadly would be to allow it to spend large amounts [of corporate money] to contact the general public. It was precisely this practice that Congress sought to check in enacting the limitations on solicitation in the first instance." App. C at 39a and 47a. Finally, the court concluded that the "violations [were] knowing and willful in that NRWC . . . failed to reveal highly pertinent facts which tended to disprove its entitlement to the exception it claimed." App. C at 53a.

Proceedings in the Court of Appeals

The United States Court of Appeals for the District of Columbia Circuit reversed the judgment of the district court. The court found unpersuasive the fact that NRWC's articles of incorporation stated that NRWC "shall not have members" and determined that the corporation, organized without capital stock and without members, was entitled to treat as a "member" of NRWC, for the purposes of 2 U.S.C. § 441b(b)(4)(C), any person who had once contributed to NRWC and completed and returned a questionnaire sent to the general public. The court expressed the view that the interests served by § 441b were not furthered by the restriction on NRWC's use of corporate funds for solicitation of contributions to ERCC. The court found that the definition of "member" adopted by the district court was "so narrow that it necessarily infringes on associational rights." App. A at 6a.

The Commission filed a petition for rehearing and suggestion for rehearing *en banc* on October 19, 1981. On November 13, 1981, an evenly divided *en banc* court of appeals denied the Commission's petition and suggestion for rehearing *en banc*. App. B. Subsequently, the Commission determined to seek review of the appellate court's judgment by filing this petition.

REASONS WHY THE WRIT SHOULD ISSUE

THE COURT OF APPEALS HAS ERRONEOUSLY DECIDED AN IMPORTANT QUESTION AS TO THE PROPER CONSTRUCTION OF THE FEDERAL ELECTION CAMPAIGN ACT

This Court should issue the writ as requested to hear and decide an important question as to the scope and application of 2 U.S.C. § 441b(b)(4)(C). The

appellate court's decision effectively repeals the express congressional prohibition upon the use of corporate funds for solicitation of political contributions to a corporation's separate segregated political fund except from those persons closely affiliated with the corporation, such as its stockholders, executive and administrative personnel or members.

The court of appeals erred in holding that persons with no rights *vis à vis* the corporation, but who the corporation believes evidence philosophical support by responding to a questionnaire and by once contributing to the corporation, could be considered "members" of the corporation within the meaning of § 441b(b)(4)(C). Under this decision, unlimited corporate funds could be used to provide administrative support for a political committee and also to solicit contributions from any member of the general public who the corporation believes evidences a "similar political philosophy." App. A at 10a. Such a result is clearly inconsistent with Congressional intent. The court's decision also conflicts with this Court's opinion in *California Medical Association* v. *Federal Election Commission*, —— U.S. ——, 101 S.Ct. 2712 (June 26, 1981), *affirming* 641 F.2d 619 (9th Cir. 1980) (*en banc*) (*"CMA* v. *FEC"*). The Commission respectfully requests that a *writ of certiorari* now issue to decide the important question of federal law presented in this case.

Congress, in drafting FECA, recognized the constitutional interests identified by this Court and carved out exceptions to the overall § 441b (formerly 18 U.S.C. § 610) prohibition on corporate spending in federal elections. *United States* v. *International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, (UAW-CIO)*, 352 U.S. 567 (1957); *United States* v. *Congress of Indus-*

trial Organizations, 335 U.S. 106 (1948). The exceptions drew a "distinction between activities directed at the general public" and corporate "communications with its stockholders and their families . . . on any subject which the courts have held is permitted." 117 Cong. Rec. 43,379 (1971) (remarks of Rep. Hansen). As this Court observed in *Pipefitters* v. *United States*, 407 U.S. 385 (1972) (*"Pipefitters"*), the legislative history of FECA establishes that the limited exceptions to § 441b were the result of Congress's careful balancing of competing interests:

> . . . there is broad agreement as to the essence of the proper balance in regulating corporate and union political activity required by sound policy and the Constitution. It consists of a strong prohibition on the use of corporate and union treasury funds to reach the general public in support of, or opposition to, Federal candidates and a *limited permission to corporations and unions, allowing them to communicate freely with members and stockholders on any subject* . . . .

Pipefitters, 407 U.S. at 431, *quoting* 117 Cong. Rec. 43,381 (remarks of Rep. Hansen) (1971) (emphasis added). *See also* App. C at 34a-35a n.24. The Court recognized that the fiduciary relationship between a corporation and its stockholders and between a labor organization and its members was the underlying basis for permitting unlimited use of corporate funds for solicitation of such persons:

> [w]ith the exemption for communications to stockholders or union members and their families, apparently in mind, Hansen stated . . . *'As fiduciaries for their members and stockholders the officers of these institutions have a duty to*

> *share their informed insights on all issues affecting their institution with their constituents.* Both union members and stockholders have the right to expect this expert guidance. This reasoning, of course, applies as well to solicitations for contributions to voluntary political funds.'

Pipefitters, 407 U.S. at 431 *quoting* 117 Cong. Rec. 43,380 (1971) (remarks of Rep. Hansen) (emphasis added); App. C at 34a-35a n.24.[5] And in *CMA* v. *FEC*, *supra*, the Court noted the difference between multicandidate political committees which "are generally unrestricted in the manner and scope of their solicitations" and "separate segregated funds . . . [which] are carefully limited in this regard." 101 S.Ct. at 2724. This Court summed up the different treatment this way:

> The differing restrictions placed on individuals and unincorporated associations, on the one hand,

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[5] In its report to accompany H.R. 12406, which amended § 441b, the Committee on House Administration stated for clarification:

> [T]he bill broadens the permissions contained in the present law to allow corporations to communicate with and solicit voluntary contributions from "executive officers". The Committee believes that management personnel as well as stockholders should be considered to be among the beneficial owners of a corporation . . . H.R. 12406 continues the rule that unions may only solicit those they represent—their members—and reaffirms the intent of the 1971 Congress that corporations must also confine their activities to a roughly comparable group—namely, stockholders and executive officers.

H.R. Rep. No. 94-917, 94th Cong., 2d Sess. 7 (1976), *Legislative History of Federal Election Campaign Act Amendments of 1976* (*"1976 Legis. Hist."*) at 807.

> and on unions and corporations, on the other hand, reflect a judgment by Congress that these entities have differing structures and purposes, and that they therefore may require different forms of regulations in order to protect the integrity of the electoral process.

Id.[6]

The lower court's decision in this case cannot be reconciled with the purposes of § 441b. Pursuant to 2 U.S.C. § 441b(b)(2) and (4), a corporation or labor organization may provide unlimited administrative support to its separate segregated political committee, but is restricted in the use of general treasury funds to soliciting only its stockholders or membership.[7] App. D at 58a-60a. In contrast, pursuant to § 441a(a)(1)(C), any political committee, not established or administered by a corporation or labor organization and not a single candidate committee, may solicit anyone for contributions, but may receive no more than $5000 in contributions annually from any

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[6] This Court has stated that "it is up to legislatures, not courts, to decide on the wisdom and utility of legislation," *State of Minnesota* v. *Clover Leaf Creamery Co.*, 449 U.S. 469 (1981), *citing Ferguson* v. *Skrupa*, 372 U.S. 726, 729 (1963). *See also Buckley* v. *Valeo*, 424 U.S. 1, 260 (1976) (White, J., concurring in part and dissenting in part). Even in the first amendment area, this Court has declared that "[t]he judgment of the Legislative Branch cannot be ignored or undervalued simply because one segment . . . casts its claims under the umbrella of the First Amendment." *Columbia Broadcasting System, Inc.* v. *Democratic National Committee*, 412 U.S. 94, 103 (1973). *See also Rostker* v. *Goldberg*, —— U.S. ——, 101 S.Ct. 2646, 2651 (June 25, 1981); *Fullilove* v. *Klutznik*, 448 U.S. 448 (1980); *United States* v. *Robel*, 389 U.S. 258, 276 (1967).

[7] *See also* 2 U.S.C. § 441b(b)(4) for other exceptions; App. D at 59a.

person, including the organization which established it. This Court has held that "contributions for administrative support clearly fall within the sorts of donations limited by § 441a(a)(1)(C)." *CMA* v. *FEC*, 101 S.Ct. at 2723 n.19. However, under the decision below, unlike any other organization which wishes to support a political committee, NRWC may have access to unlimited corporate funds to provide administrative support to its political committee and also use those funds to solicit contributions to its separate segregated fund from virtually anyone NRWC wishes to consider to be its "members".[8] As a result, virtually all contributions received by the separate segregated fund can be converted into political contributions, the use of which is dictated by the corporation.[9] Indeed, the unlimited use of corporate funds to defray the cost of solicitation coupled with the ability to solicit virtually anyone may well permit corporations to amass large amounts of money to be used in federal elections.[10] In this manner, separate segregated funds set up by these corporations

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[8] The court's holding that NRWC could solicit political contributions from anyone with a "similar political philosophy" raises serious vagueness problems. In addition, the Court of Appeals for the District of Columbia Circuit has held that the Commission could not pose questions regarding a person's political philosophy. *Jones* v. *Unknown Agents of the Federal Election Commission*, 613 F.2d 864, 878-80 (D.C. Cir. 1979), *cert. denied*, 444 U.S. 1074 (1980), *cited in Committee to Elect Lyndon LaRouche* v. *Federal Election Commission*, 613 F.2d 834, 848 n.23 (D.C. Cir. 1979), *cert. denied*, 444 U.S. 1074 (1980).

[9] *See Pipefitters*, 407 U.S. at 420 n.35.

[10] Corporations, as well as individuals, render financial support to NRWC. Joint Stipulation of Facts, Joint Appendix at 165 and 198.

> would be able to influence the electoral process to an extent disproportionate to their public support and far greater than the individual or group that finances the committee's operations would be able to do acting alone. In doing so, they could corrupt the political process in a manner that Congress has sought to prohibit.

CMA v. *FEC*, 101 S.Ct. at 2723 n.19.

Consistent with the legislative history of § 441b, the district court found that § 441b(b)(4)(C) demonstrates Congress's "inten[t] to allow corporations without capital stock and membership organizations to solicit persons analogous to shareholders" and not to "create a loophole for mass solicitation based on purely philosophical affinity". App. C at 37a.[11] *See*

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[11] Congress intended to permit a "corporation without shareholders" to use corporate treasury funds to solicit contributions to its own political committee—its separate segregated fund—from its members, whom Congress contemplated to be those persons who occupied a similar relationship to these corporate entities as stockholders to a corporation and members to a union. The legislative history of § 441b shows that the subsection allows "corporations that do not have stock but have a membership organization . . . to set up separate segregated political funds to which it can solicit contributions from its membership; since it does not have any stockholders to solicit, it should be allowed to solicit its members." 122 Cong. Rec. S3811, S3812 (daily ed. Mar. 18, 1976) (remarks of Sen. Allen, the Amendment's sponsor), *1976 Legis. Hist.* at 463, 464. *See* 122 Cong. Rec. S6477-78 (daily ed. May 4, 1976) (remarks of Sens. Allen and Cannon), *1976 Legis. Hist.* at 1107-08 (members are those "who, not being stockholders, still *make up the corporation* . . .") (emphasis added). As Senator Cannon explained, if individuals connected with the organization "are members within the definition of that type of organization, then they could be solicited [for political contributions] under [§ 441b(b)(4)(C)] of the law." 122 Cong. Rec. S6478 (daily ed. May 4, 1976) (remarks of Sen. Cannon), *1976 Legis. Hist.* at 1108.

CMA v. *FEC*, 641 F.2d 619, 630, 631 (9th Cir. 1980) (*en banc*), *aff'd.* 101 S.Ct. 2712 (1981), (separate segregated fund serves as "focal point for the interests of closely affiliated persons"; "separate segregated funds can be *maintained only for individuals in a narrowly defined class* solicited under the Act's severe restrictions") (emphasis added); *Bread Political Action Committee* v. *Federal Election Commission*, 635 F.2d 621, 627 (7th Cir. 1980) (*en banc*), *prob. juris. postponed*, No. 80-1481 (July 2, 1981) (As to § 441b(b)(2)(C), the "exclusion is clearly intended to strike a balance between the objectives served by banning the use of corporate funds in federal elections and permitting wholly unrestricted association between the regulated groups and those individuals in a direct relationship to them").

Finally, the appellate court's definition of "membership" in a corporation runs contrary to the common understanding of the term "member," which necessarily assumes a close relationship within an organization, "some right to participate in" and a corresponding duty to "support the organization". App. C at 37a-38a. *See Hunt* v. *Washington Apples Advertising Commission*, 432 U.S. 333, 344-345 (1977); *Health Research Group* v. *Kennedy*, 82 F.R.D. 21, 27 (D.D.C. 1979).[12] On the record presented, no such relationship exists between NRWC and those persons

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[12] The term "member" used in § 441b(b)(4)(C) is used in another subsection [§ 441b(b)(4)(A)(ii)] of this same statutory provision involving union membership, which is recognized to entail a voluntary, contractual relationship totally at odds with the meaning which the court applied to that term. *See National Labor Relations Board* v. *Boeing Co.*, 412 U.S. 67, 75 (1973); *International Association of Machinists* v. *Gonzales*, 356 U.S. 617, 618 (1958).

whom NRWC solicited for contributions to its separate segregated fund to be used in federal elections.

NRWC's corporate documents are explicit as to its status as a non-membership corporation.[13] In addition, the stipulated facts demonstrate that those persons NRWC chooses to call its "members"—for purposes of FECA alone—have no voting rights in the corporation, are not told how to decline "membership" and do not know the status of their "membership" or what rights, duties and privileges are accorded them as "members".[14] Supporters of NRWC are not told that the return of a questionnaire will qualify them as a "supporting member" of NRWC, or that enclosing money will make them "active members" of NRWC. Having contributed to NRWC, the only way to avoid membership in the corporation is to write to NRWC and expressly reject membership. *See* App. C at 20a. The appellate court's en-

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[13] This Court has long held that "no corporation has authority to . . . go beyond the limits of its charter." *Yonkers* v. *Downey*, 309 U.S. 590, 597 (1940). Indeed "being the mere creature of law [a corporation] possesses only those properties which the charter of creation confers upon it, either expressly, or as incidental to its very existence." *Dartmouth College* v. *Woodward*, 4 Wheat. 518, 536 (1819). Thus, a "corporation is empowered to act not in general but only in accordance with the limited powers given to it by its articles of incorporation." *Elisian Guild, Inc.* v. *United States*, 412 F.2d 121, 123 (1st Cir. 1969).

[14] Indeed, NRWC voluntarily chose non-membership status to avoid compliance with state laws requiring a membership corporation to accord its "members" some rights in the corporation, requirements NRWC considered burdensome. *See* App. C at 42a and n.32. NRWC should not be allowed to elect to be considered a "membership corporation" for the sole purpose of taking advantage of the membership exception under § 441b. *See* note 2, *supra*.

dorsement of this involuntary imposition of "membership" is contrary to the "law which normally is reflected in our free institutions—the right of the individual to join or to resign from associations . . . ." *Booster Lodge #405, International Association of Machinists* v. *National Labor Relations Board*, 412 U.S. 84, 88 (1973) *citing National Labor Relations Board* v. *Textile Workers*, 409 U.S. 213, 216 (1972).[15]

In sum, the appellate court's decision construes the term "member" as used in § 441b(b)(4)(C) so broadly as to permit certain corporations to use corporate treasury funds to solicit contributions from a virtually unlimited pool of solicitees—all those persons whom it chooses to call its "members".[16] As dis-

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[15] NRWC's definition of "membership", a definition supported by the lower court's decision, ignores the Commission's interpretation of membership organization. Through the advisory opinion process the Commission has elaborated the factors which will support an organization's claim to the membership exception of § 441b(b)(4)(C) and the Commission's regulations. *See* 11 C.F.R. § 114.1(e) (definition of member). Indeed, in AO 1976-79, 1 Fed. Elec. Camp. Fin. Guide (CCH) ¶ 5308, NRWC was told by the Commission that as a threshold matter, where the corporation's formal documents, *e.g.*, articles of incorporation, preclude membership in a corporation, § 441b(b)(4)(C) is not applicable. And in AO 1977-67, 1 Fed. Elec. Camp. Fin. Guide (CCH) ¶ 5326, the Commission wrote that § 441b(b)(4)(C) and FEC regulation 11 C.F.R. § 114.1(e) assume that "there are in fact requirements for membership in the organization . . . and that a person can only be considered a member of an organization if he or she *knowingly* has taken" some step to become a member of the organization (emphasis added).

[16] Since NRWC is a corporation without capital stock organized *without members* the persons solicited could not be "members within the definition of that type of organization" for purposes of § 441b(b)(4)(C). *See 1976 Legis. Hist.* at 1108.

cussed, *supra*, such a loose standard will enable certain corporations, unlike other organizations such as CMA, to use unlimited amounts of general treasury funds to solicit virtually anyone and thus clearly "undermine the very purpose of the Act's restriction on the use of corporate treasuries in federal elections." *Bread Political Action Committee* v. *Federal Election Commission*, 635 F.2d at 628. The decision of the court below merits review, consideration and reversal by this Court.

CONCLUSION

The judgment of the United States Court of Appeals for the District of Columbia Circuit frustrates the intent of Congress to regulate federal elections, applies a construction of 2 U.S.C. § 441b(b)(4)(C) which is inconsistent with Congressional intent and conflicts with precedent set by this Court and other courts of appeals. A *writ of certiorari* should issue to review the judgment in this case.

Respectfully submitted,

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FEBRUARY 10, 1982

Appendix

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 80-1487

NATIONAL RIGHT TO WORK COMMITTEE, INC., ET AL.

v.

FEDERAL ELECTION COMMISSION, ET AL.

No. 80-1488

FEDERAL ELECTION COMMISSION

v.

NATIONAL RIGHT TO WORK COMMITTEE, INC., ET AL.

Appeal from the United States District Court
for the District of Columbia

(D.C. Civil Action Nos. 78-0315 and 77-2175)

Argued May 19, 1981

Decided September 4, 1981

Richard H. Mansfield III, with whom *Alan P. Dye* and *Richard J. Clair* were on the brief, for appellants.

Miriam Aguiar, Attorney, Federal Election Commission, with whom *Charles N. Steele*, General Counsel, *Kathleen Imig Perkins*, Asst. General Counsel,

and *Jeffrey H. Bowman*, Attorney, Federal Election Commission, were on the brief, for appellees.

Before: TAMM, *Circuit Judge*, THORNBERRY, *Senior Circuit Judge*,* and WILKEY, *Circuit Judge*.

Opinion for the court filed by *Senior Circuit Judge* THORNBERRY.

THORNBERRY, *Senior Circuit Judge*: The Federal Election Campaign Act of 1971, 2 U.S.C. § 431 *et seq.*, and its subsequent amendments govern federal election campaigns by imposing restrictions on political contributions and expenditures that apply to all participants in the election process. In this appeal, the National Right to Work Committee (NRWC) challenges the constitutionality and application of sections 441b(b)(4)(A) and (C) of the Act, which together prohibit a corporation without capital stock from soliciting contributions from persons other than its members. The district court concluded that, as applied to NRWC, the statutory provisions in question are neither unconstitutionally vague nor overbroad and that NRWC had violated the Act by soliciting persons who were not members of the organization. Because in our view the term "members" as used in § 441b(b)(4)(C) necessarily includes those individuals solicited by NRWC, we reverse the judgment of the court below.

The National Right to Work Committee is a nonprofit corporation without capital stock that was formed to educate the public on and to advocate voluntary unionism. NRWC conducts a continuous and extensive program of advocacy through the dissemination of information on compulsory unionism

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* Of the United States Court of Appeals for the Fifth Circuit, sitting by designation pursuant to 28 U.S.C. § 294(d) (1976).

to its members and to the general public. The Employee Rights Campaign Committee (ERCC) is a separate segregated fund established and maintained by NRWC to receive and extend funds on behalf of federal candidates, and it is registered as such with the Federal Election Commission (FEC).

In November 1977, the FEC began an enforcement proceeding in federal district court, charging that NRWC had violated 2 U.S.C. § 441b(b)(4) of the Federal Election Campaign Act, which declares it unlawful "for a corporation, or a separate segregated fund established by a corporation, to solicit contributions to such a fund from any person other than its shareholders and their families and its executive or administrative personnel and their families. . . ." In defense of its actions, NRWC relied on an exception to that prohibition, which provides that § 441b(b)(4) "shall not prevent a membership organization, cooperative, or corporation without capital stock, or a separate segregated fund established by a membership organization, cooperative, or corporation without capital stock, from soliciting contributions to such a fund from members of such organization, cooperative, or corporation without capital stock." 2 U.S.C. § 441b(b)(4)(C). NRWC contended that the individuals it solicited were members of NRWC within the meaning of this provision.[1]

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[1] NRWC attracts members by publicizing its position on issues relating to compulsory unionism through advertisements, personal contacts, and, primarily, letters. These letters describe the purpose of NRWC, urge the recipient to assist NRWC (by, for example, writing to legislators), request financial support, and ask the recipient to respond to a questionnaire that will determine whether that person shares a similar political philosophy. A person who, through his response, evidences an intention to support NRWC in promoting

One month earlier, anticipating this enforcement proceeding, NRWC had filed a complaint seeking injunctive and declaratory relief and alleging, among other constitutional challenges, that the term "members" in § 441b(b)(4) was unconstitutionally vague. The cases were consolidated.

The FEC concedes that NRWC can freely solicit contributions from its "members," if it has any within the meaning of § 441b. The Act does not define the term and FEC regulations adopt the standards of the organization, with the caveat that membership requirements cannot consist solely of the requirement that one contribute to the separate segregated fund.[2] The FEC contends that NRWC's articles of incorporation, which state that NRWC has

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voluntary unionism qualifies as a member. A person who responds without contributing financially is considered a supporting member; a person who responds and also contributes is considered an active member. NRWC sends an acknowledgment and a membership card to both classes. In the regular course of operations. NRWC's members receive newsletters, action alerts, and responses to individual requests for information. They respond to issue surveys and are asked to communicate with their elected representatives when appropriate. *See* Joint App., vol. II, at 387 *et seq.*

[2] The regulations governing corporate and labor organization activity provide:

> (e) "Members" means all persons who are currently satisfying the requirements for membership in a membership organization, trade association, cooperative, or corporation without capital stock . . . . A person is not considered a member under this definition if the only requirement for membership is a contribution to a separate segregated fund.

Federal Election Commission Regulations, 11 C.F.R. § 114.1(e).

no members, are dispositive. Alternatively, the FEC embraces the district court's definition, which defines "members" as those "who stand in a similar relation to non-stock corporations as shareholders stand to stock corporations and union members stand to labor unions." FEC v. National Right to Work Committee, 501 F.Supp. 422, 432 (D.D.C. 1980).[3]

We see absolutely no justification for applying a state law standard. State definitions of "members" in non-stock corporations for purposes of state corporate or tax law are not likely to take into account the important first amendment considerations at the heart of any controversy surrounding the construction or application of the Federal Election Campaign Act.[4] Further, we are troubled by the fact that the FEC considers the articles of incorporation dispositive

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[3] The district court continued:

> In other words, the term member should not be read to make the membership exception disproportionately broader or narrower than the shareholder exception or the union member exception. "Member" thus encompasses persons who have interests and rights in an organization similar to those of a shareholder in a corporation and a union member in a labor organization. To read the exception more broadly would be to upset the symmetry of the statutory scheme.

501 F. Supp. at 432.

[4] NRWC is incorporated under Virginia law. Official recognition of members in the articles of incorporation would have required NRWC to hold an annual meeting of all members, a prohibitively expensive requirement (and one, in our view, that serves no purpose in the context of a corporation organized not for profit or other business purposes, but for the promotion of a political philosophy). *See* VA. CODE § 1301-213.

only if they negate members for purposes of state law, but not if the articles provide for members.[5]

We think that the Act requires a uniform definition. Considering the language of the Act in light of the interests it was designed to serve, however, we conclude that the definition adopted by the district court is so narrow that it necessarily infringes on associational rights. The district court considered NRWC's argument to be in essence an attack on the general proscription on corporate spending in § 441b(a), 501 F.Supp. at 437, and the court therefore focused only on the constitutionality of this general rule. The court found the state interest in avoiding the appearance or actuality of corruption sufficiently compelling to sustain the restrictions on corporate spending and summarily concluded that "NRWC's associational rights claim falls before the same compelling interest." *Id.* at 438. By focusing on the general proscription rather than the more narrow provisions that are actually at issue in this case, the court neglected to consider important factors that distinguish, first, solicitation from contributions and expenditures and, second, non-stock corporations organized solely for political purposes from stock corporations. These factors suggest that neither of

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[5] We note that during conciliation, NRWC offered to amend its articles of incorporation, but the FEC conditioned acceptance of that offer on the requirement that NRWC take additional undefined "other steps" to become a membership organization. We are inclined to agree with NRWC that the FEC has barricaded itself behind NRWC's articles of incorporation throughout this litigation and has avoided the core problem of defining the terms "member" and "membership organization."

the interests advanced by the FEC can justify the restrictions on NRWC's solicitation activities.

The first amendment clearly protects political expression in the form of association and solicitation. NAACP v. Button, 371 U.S. 415, 83 S.Ct. 328, 9 L.Ed.2d 405 (1963); Village of Schaumburg v. Citizens for a Better Environment, 444 U.S. 620, 100 S.Ct. 826, 63 L.Ed.2d 73 (1980).[6] But these activities are not protected absolutely, and they may be regulated if the state demonstrates a sufficiently important interest and employs means closely drawn to avoid unnecessary abridgement of associational right. Buckley v. Valeo, 424 U.S. 1, 25, 96 S.Ct. 612, 638, 46 L.Ed.2d 659 (1976). The district court correctly noted the primary objective of the Federal Election Campaign Act: the elimination of corruption and the appearance of corruption in the federal election process.[7] *Id.* The restrictions imposed by § 441b on

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[6] "[G]roup association is protected because it enhances '[e]ffective advocacy.' The right to join together 'for the advancement of beliefs and ideas' is diluted if it does not include the right to pool money through contributions, for funds are often essential if 'advocacy' is to be truly or optimally effective." Buckley v. Valeo, 424 U.S. 1, 65-66, 96 S.Ct. 612, 657, 46 L.Ed.2d 659 (1976) (citations omitted).

[7] The appearance and reality of corruption stem from the real or imagined pressure imposed upon political candidates by those who contribute heavily to their campaigns. Thus,

> the primary interest served by . . . the Act as a whole . . . is the prevention of corruption and the appearance of corruption spawned by the real or imagined coercive influence of large financial contributions on candidates' positions and on their actions if elected to office.
>
> . . . .
>
> To the extent that large contributions are given to secure a political *quid pro quo* from current and potential

corporations and labor organizations, as well as insulating the political process from the deleterious influence of aggregated wealth, serve the additional objective of protecting dissenting minority interests from being coerced into supporting political philosophies to which they do not adhere or which they may not wish to promote. Pipefitters Local Union No. 562 v. United States, 407 U.S. 385, 414-415, 92 S.Ct. 2247, 2264, 33 L.Ed.2d 11 (1972); *see also* United States v. United Automobile Workers, 352 U.S. 567, 570-84, 77 S.Ct. 529, 530, 1 L.Ed.2d 563 (1957); United States v. Congress of Industrial Organizations, 335 U.S. 106, 113, 68 S.Ct. 1349, 1353, 92 L.Ed. 1849 (1948).

As to the first interest, we believe that solicitation, without more, will neither corrupt officials nor distort elections.[8] In our view, contribution limitations and disclosure provisions are a more direct and less restrictive way to prevent or at least to expose any sort of *quid pro quo* arrangements. As to the second interest, the individuals from whom NRWC solicits contributions, unlike employees of a corporation or

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> office holders, the integrity of our system of representative democracy is undermined.
>
> Of almost equal concern . . . is avoiding the appearance of corruption.

Buckley v. Valeo, 424 U.S. at 25-27, 96 S.Ct. at 638.

[8] It is not the aggregation of wealth but the distribution of it that may distort the political process. Further, we note that although Congress was concerned with the deleterious effects of aggregated wealth, "the aggregated wealth it plainly had in mind" was that in general purpose union or corporate treasuries, not funds donated by individuals "of their free and knowing choice." *See* Pipefitters Local Union No. 562 v. United States, 407 U.S. 385, 416, 92 S.Ct. 2247, 2265, 33 L.Ed.2d 11 (1972).

members of a labor union, clearly are not subject to coercion.[9] We therefore fail to see how the interests asserted by the FEC are served by restricting NRWC's solicitation activities.

The FEC argues that Bread Political Action Committee v. FEC, 635 F.2d 621 (7th Cir. 1980) (en banc), *cert. granted*, 49 U.S.L.W. 3975 (1981), supports its position. There, the court considered and rejected a challenge to another exception, paragraph (D) of § 441b(b)(4), which parallels the exception in paragraph (C), and permits a trade association or its segregated political fund to solicit contributions from the stockholders and executive and administrative personnel of its member corporations and their families provided that the solicitation has been approved by the member corporation. The plaintiffs in *Bread* complained that the avenue of solicitation allowed them under paragraph (D) was too limited to withstand constitutional scrutiny. The court of appeals upheld the constitutionality of paragraph (D) as a "very narrowly drawn aspect of a statutory scheme carefully designed to balance a compelling governmental interest and jealously guarded First Amendment freedoms." *Id.* at 629.

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[9] Corporations and labor organizations have primary responsibilities to shareholders and union members that are unrelated to wholesale participation in the electoral process. The solicitation provisions perhaps help to ensure that corporations and labor organizations attend first to those primary responsibilities. Further, § 441b(b)(4)(A) restricts corporations and labor organizations to the solicitation of those individuals likely to be harmed by corporate or union overindulgence in the political arena. None of these considerations arises in the context of a non-stock corporation organized not for profit but to advance a particular political philosophy.

In our view, paragraph (D) does nothing more than ensure that trade associations will not provide a vehicle through which member corporations can avoid the restrictions on corporate solicitation in paragraph (4)(A)(i). Assuming that the (4)(A)(i) restrictions as applied to stock corporations withstand constitutional scrutiny, an issue not before us and one that we do not decide, it would seem that a provision such as paragraph (D) narrowly drawn to prevent the avoidance of those restrictions would withstand a similar challenge. But even if we assume that the interest in preventing coercion of a dissenting stockholder or union member is compelling enough to warrant the restrictions imposed by § 441b (b)(4)(A) on stock corporations and labor unions, this interest is not served by restricting the solicitation activities of a non-stock corporation organized solely for political purposes. The FEC's reliance on the *Bread* decision is therefore misplaced.

The NRWC operation, in our view, ensures that NRWC accurately identifies and solicits only those individuals who share a similar political philosophy and who have evidenced a willingness to promote that philosophy through support of the Committee. *See* note 1 *supra*. The interests advanced by the FEC are indeed compelling, but the FEC has failed to demonstrate how those interests are served by prohibiting the solicitations at issue in this case. Absent the exception provided by subsection (C), then, we would seriously question the constitutionality of subsection (A) as applied to NRWC. We therefore hold that the term "members" in § 441b(b)(4)(C) embraces at least those individuals whom NRWC describes as its active and supporting members, reversing the judgment of the court below.

Reversed.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

September Term, 1981

Civil Action No. 78-0315

Argued: 5-19-81

No. 80-1487

NATIONAL RIGHT TO WORK COMMITTEE, INC., ET AL.,
APPELLANTS

v.

FEDERAL ELECTION COMMISSION, ET AL.

---

and consolidated case no. 80-1488

Civil Action No. 77-2175

Before: Tamm and Wilkey, Circuit Judges, Thornberry *, Senior Circuit Judge, United States Court of Appeals for the Fifth Circuit.

ORDER

On consideration of the petition for rehearing of the Federal Election Commission, filed October 19, 1981, it is

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* Sitting by designation pursuant to Title 28 U.S.C. § 294(d).

ORDERED by the Court that the aforesaid petition is denied.

Per Curiam

FOR THE COURT:

GEORGE A. FISHER
Clerk

By: /s/ Robert A. Bonner
ROBERT A. BONNER
Chief Deputy Clerk

Filed Nov. 13, 1981

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

September Term, 1981

Civil Action No. 78-0315

Argued: 5-19-81

No. 80-1487

NATIONAL RIGHT TO WORK COMMITTEE, INC., ET AL., APPELLANTS

v.

FEDERAL ELECTION COMMISSION, ET AL.

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and consolidated case no. 80-1488

Civil Action No. 77-2175

Before: Robinson, Chief Judge, Wright, Tamm, MacKinnon, Robb, Wilkey, Wald, Mikva, Edwards and Ginsburg, Circuit Judges.

ORDER

The suggestion for rehearing *en banc* of the Federal Election Commission et al., has been circulated to the full Court and a majority of the members of the Court have not voted in favor thereof. On consideration of the foregoing, it is

ORDERED by the Court *en banc* that the aforesaid suggestion is denied.

Per Curiam

FOR THE COURT:

GEORGE A. FISHER
Clerk

By: /s/ Robert A. Bonner
ROBERT A. BONNER
Chief Deputy Clerk

Circuit Judges Wright, Wald, Mikva, Edwards and Ginsburg would grant the suggestion for rehearing *en banc*.

Filed Nov. 13, 1981

APPENDIX C

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 77-2175

FEDERAL ELECTION COMMISSION, PLAINTIFF

v.

NATIONAL RIGHT TO WORK COMMITTEE, ET AL., DEFENDANTS

Civil Action No. 78-0315

NATIONAL RIGHT TO WORK COMMITTEE, ET AL., PLAINTIFFS

v.

FEDERAL ELECTION COMMISSION, ET AL., DEFENDANTS

[Filed Apr. 24, 1980]

MEMORANDUM OPINION

Barrington D. Parker, District Judge:

The Federal Election Campaign Act of 1971, (FECA or Act) 2 U.S.C. § 431 *et seq.*, establishes an intricate statutory scheme governing federal election campaigns. It imposes restrictions on political contributions and expenditures which apply to all phases of and participants in the election process. The Supreme Court has observed that the primary purpose of the statute is "to limit the actuality and appearance of corruption resulting from large individual financial contributions" in federal elections.

Buckley v. *Valeo*, 424 U.S. 1, 26 (1976) (per curiam).

These consolidated cases[1] challenge the constitutionality and application of provisions of the Act, section 441b(b)(4)(A) and (C), which forbid a corporation without capital stock to solicit contributions from persons other than its members. The controversy arises from the Federal Election Commission's (FEC or Commission) charge that in 1976, the National Right to Work Committee (NRWC or Committee), unlawfully solicited contributions from persons who were not members of that organization. NRWC maintains that it has complied with the statute, or in the alternative, that the restrictions imposed are either void for vagueness or an unconstitutionally overbroad restriction on First Amendment rights.

The underlying material facts are not disputed. The parties have filed cross-motions for summary judgment. The legal memoranda, the various exhibits, submissions and the argument of counsel have been considered. The Court concludes that, as applied to NRWC, the statutory provisions in question are neither unconstitutionally vague nor overbroad, and that NRWC has violated the Act by soliciting persons who are not members of that organization.

I. BACKGROUND

A. *The Structure of the National Right to Work Committee*

The NRWC is a non-profit corporation without capital stock incorporated under the laws of Virginia.

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[1] For a discussion of the consolidated cases see pages 7-8 *infra*.

Its stated purposes as set out in the articles of incorporation are "[t]o help make the public aware of the fact that American citizens are being required, against their will, to join and pay dues to labor organizations in order to earn a living," and that compulsory unionism violates fundamental rights.

The essential features of its structure and method of operations have been stipulated to or are otherwise clearly defined by discovery. The Committee's articles of incorporation specifically provide that it shall not have members. A board of directors is authorized to govern and manage the corporate affairs. The board is self-perpetuating; new directors are elected by majority vote of the existing board of directors. The initial board members were named directly in the articles of incorporation.

NRWC's concept of membership is elusive, at best. The Committee's bylaws contain no reference to members or membership and make no reference to any standards or criteria for membership or any rights or obligations of members. No formal corporate papers exist which describe the rights, duties, and benefits of membership in NRWC.

From 1971 through at least 1974, NRWC claimed before the Internal Revenue Service a tax exempt status as a social welfare organization. In response to a question put on federal tax forms requiring membership organizations to enter the amount allocated for political purposes, NRWC either left the space provided for response blank or filled the space with the response of "N/A." However, in a deposition filed earlier in a different proceeding before this District Court, Reed Larson, President of NRWC, stated that the "Committee acknowleges contributions as members." He added that the additional In-

ternal Revenue Service forms required to be filed by membership organizations indicating the amounts allocated to political purposes were never filed because NRWC had no political expenditures and because it was not a membership organization.[2]

Despite these conflicting representations the Committee claims a membership in excess of 1 million persons. This claimed membership strength is built on solicitations addressed to potential supporters of its mission. To locate such supporters, it buys, rents and otherwise obtains mailing lists. Letters are then sent to individuals on the lists. These "membership solicitation letters" are frequently written on the letterhead stationery of a Member of Congress and signed by the addressor Congressman or Senator. While the letters are ostensibly sent to persons sympathetic to the Committee's cause, because of the source of the addressee's name, this cannot be definitely determined in advance.[3] The "membership solicitation letters" are initiated by the NRWC on a regular basis and in large numbers. The record shows for example that within a one-month period, late December, 1977 to mid January, 1978, the Committee sent eight million copies of one such form letter to members of the general public.

A typical letter explains the evils of compulsory unionism and outlines NRWC's efforts to combat it through legislative action. A questionnaire is enclosed with the letter, posing general inquiries about

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[2] Deposition of Reed Larson, March 19, 1974, 712-14, *UAW v. National Right to Work Legal Defense Fund and Educational Foundation*, Civil Action No. 839-73 (D.D.C. filed May 1, 1973).

[3] *See* Transcript of Hearing on Cross-motions for Summary Judgment, November 19, 1979 at 57.

the reader's attitude toward compulsory unionism. A space is included in the questionnaire where a person may indicate the amount of any contribution, followed by a statement that the contribution will be used to compile and publish the results of the questionnaire or to secure the passage or defeat of a particular piece of legislation.

The letters and the questionnaire do not invite the recipient to join nor do they discuss any aspect of membership in the NRWC. Indeed, nothing is recited as to how a recipient may accept or become a member.[4] Nonetheless, recipients who respond favorably to the inquiries, which counsel for NRWC admitted are framed to elicit favorable responses, are then sent membership cards. The questionnaires vary from mailing to mailing, and the standards regarding correct responses needed to qualify for membership are set by NRWC's president, who passes them

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[4] *See* Joint Exhibit Binder (JEB) Ex. 33-38. One letter and questionnaire sent out in January 1977, after the solicitations at issue here, was accompanied by a sheet entitled "The National Right to Work Committee (Questions and Answers)" containing additional information about NRWC. In response to questions posed therein, the Committee claims to have (at that time) "700,000 supporters nationwide, almost half of whom have made contributions in the past twelve months." In response to the question "How much does it cost to join [the NRWC]?" the Committee explains "The members . . . contribute whatever they can afford. Some people contribute hundreds of dollars each year. The average new member contributes just over twelve dollars." The Committee identifies its members as "men and women in all walks of life, union members as well as non-union employees from every corner of America—who, through their voluntary contributions, support the work of the Committee." The letter and questionnaire accompanying this sheet do not mention membership in NRWC. JEB Ex. 35.

on to the Membership Director. NRWC admits that these standards are seldom, if ever, put in writing.

The Committee recognizes two classes of "members": those who respond to the questionnaire and contribute money are deemed "active members"; those who merely respond to the questionnaire without a contribution are classified as "supporting members." On the approximate anniversary of their last donation to NRWC, all past contributors (active members) receive a new membership card and a renewal notice thanking them for their past support and requesting an additional contribution. Those who do not respond receive a second, and if necessary, a third notice. Even if these appeals are unanswered, the unresponsive are maintained on NRWC's rolls as "active members." Those who fail to contribute for two successive years are reduced in status to "supporting members." Such a member apparently retains that status indefinitely without taking any affirmative steps.

On the basis of this method of "membership" procurement, NRWC claims a total of 1.25 million members and an increase in its membership by 750,000 persons in the one-year period, March 1975 - March 1976. In the election year of 1976, NRWC spent over $1 million in soliciting persons to become "members" or "renew" their "membership" in NRWC. To terminate affiliation a person must contact the Committee and request to be removed from the membership lists. Those who do so are sent a letter asking them to reconsider, and in the event that they still wish to drop their membership, to complete and return an enclosed form. If the NRWC receives no response to this appeal, the person's name is stricken within "probably, four weeks" of the initial request. None

of the foregoing procedures or distinctions has ever been described in the materials mailed to present or prospective members. Nor have they been included in the articles of incorporation or bylaws of the NRWC.

B. *The Alleged Violations of FECA*

The Federal Election Campaign Act restricts corporate financial participation in the electoral process. Section 441b(a) forbids a corporation from making a contribution or expenditure of money in connection with a federal election. Section 441b(b)(4)(A)(i) provides that a corporation may expend money to solicit political contributions to its separate segregated fund but only from its stockholders and its executive and administrative personnel and the families of those persons. In addition section 441b(b)(4)(C) provides that a corporation without capital stock may expend money to solicit political contributions to its separate segregated fund from its members.[5]

On December 30, 1975 in an effort to comply with the statute, the NRWC established a separate entity, the Employee Rights Campaign Committee (ERCC) which is also a defendant in this case. This organization, controlled by NRWC, served as a separate segregated fund empowered to accept contributions and make expenditures on behalf of candidates for public office who shared NRWC's philosophy. On January 6, 1976, the NRWC formally requested the Federal Election Commission to issue an advisory opinion as to whether NRWC or ERCC could lawfully solicit contributions from "active members or supporting

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[5] For a full discussion of the relevant provisions of the Act see Part 1-C *infra*.

members of the National Right to Work Committee." Although the letter mentioned the distinction between active and supporting members, it did not reveal that NRWC's corporate charter expressly provided that the Committee had no members, nor did it explain the membership process in any detail. Later that month, on January 30, before the Commission acted on the request, the Supreme Court invalidated the means of appointing Federal Election Commissioners, thus forestalling the issuance of formal advisory opinions. *Buckley* v. *Valeo*, 424 U.S. at 140-43.

Amendments to the Act curing the constitutional defects in the appointment process became effective May 11, 1976.[6] Four days prior to that date, however, on May 7, NRWC mailed over 34 thousand letters soliciting contributions to ERCC to be used to support candidates in the 1976 elections. In June an additional 35 thousand persons were solicited and from September 9 through 15, NRWC contacted nearly 198 thousand persons in similar solicitations.

The letters mailed during the five-month period warned the recipient that organized labor was threatening to make major gains in the 1976 congressional elections. Signed by an officer of the ERCC, the letters sought contributions to be used to support congressional and senatorial candidates who agreed with NRWC philosophy and political goals. In all, NRWC contacted approximately 267 thousand persons and raised $77,474. Both NRWC and ERCC concede that none of those persons solicited between May 7, and September 15, 1976 were stockholders of NRWC or

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[6] Federal Election Campaign Act Amendments of 1976, Pub. L. No. 94-283, §§ 101, 108, 90 Stat. 475, 482 (1976) (codified at 2 U.S.C. §§ 437c, 437f).

known to be executive or administrative personnel of NRWC or the families of such persons. Rather they claim that NRWC is a corporation without capital stock with members and that the persons solicited in 1976 were members of NRWC. ERCC filed all the necessary disclosure reports with the FEC, including the names of those who contributed over $100.00.

Meanwhile, on May 26, a reconstituted Commission published proposed general regulations pursuant to the new Act and invited public comment. The regulations included a proposed definition of "members." [7] On June 22, the FEC advised NRWC that in light of the proposed rules, the NRWC's advisory opinion file would be closed. The letter however, invited NRWC to request an opinion as to the regulations and the statute if the proposed regulations did not satisfactorily cover a specific factual situation. NRWC renewed its request for an advisory opinion on August 31, without modifying the earlier applica-

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[7] The proposed regulations provided:

> "Members" means all persons who are currently satisfying the requirements for membership in a membership organization, trade association, cooperative, or corporation without capital stock and in the case of a labor organization, persons who are currently satisfying the requirements for membership in a local, national, or international labor organization. Members of a local union are considered to be members of any national or international of which the local union is a part and of any federation with which the local national, or international union is affiliated. A person is not considered a member under this definition if the only requirement for membership is a contribution to a separate segregated fund.

41 Fed. Reg. 21,592 (1976) (codified at 11 C.F.R. 114.1(e) (1979).

tion and without mentioning that in the interim it had mailed over 70,000 solicitation letters.

The FEC staff submitted a draft opinion to the Commission in late September, 1976. That draft was withdrawn, however, when the staff acquired information which cast doubt on NRWC's claim to be a membership corporation.[8] Shortly thereafter, acting on a complaint brought by the National Committee for an Effective Congress, the FEC notified NRWC that there was "reason to believe" that NRWC had violated the Act by soliciting persons who were not members. An investigation was initiated by the Commission staff and in April, 1977, the Commissioners voted unanimously that there was reasonable cause to believe that a violation had taken place. The parties then engaged in informal conciliation conferences as required under the statute. Their conciliation efforts proved fruitless and on October 5, 1977, the Commissioners by a 6-0 vote authorized initiation of civil enforcement proceedings.

Alerted to the Commission's intention, NRWC struck first by filing on October 20, 1977, a complaint seeking injunctive and declaratory relief in the District Court for the Eastern District of Virginia. The

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[8] The staff was alerted to these facts during a meeting on September 28 or 29 with FEC Commissioner Harris at which Harris discussed the proposed advisory opinion with two attorneys from the General Counsel's Office. At the meeting Harris expressed doubts whether NRWC was in fact a membership organization; it is uncertain whether he actually gave the staff lawyers copies of NRWC's articles of incorporation and a 1972 tax statement or merely told them of the documents existence. *See* Joint Stipulation of Facts (JSF) ¶ 21. In any event, one week after the meeting, the General Counsel's Office requested that NRWC provide additional information on its membership status.

suit alleged that § 441b(b)(4)(C) of the Act, allowing solicitation of "members" was unconstitutionally vague; that the definition of "member" adopted by the FEC in its regulations and practice violated equal protection by favoring labor unions over non-stock corporations; and, that the FEC handling of the advisory opinion and the investigation offended due process.

One month later, the FEC filed an enforcement proceeding in this Court,[9] alleging that because of NRWC's articles of incorporation and actual structure, it was not entitled to the exemption under section 441b(b)(4)(C) which allowed non-stock corporations to solicit their members. As affirmative relief the Commission sought an order directing that ERCC and NRWC be required to refund all money unlawfully solicited and enjoining future solicitations in violation of federal election laws. In addition, substantial civil penalties were sought under section 437g. ERCC and NRWC answered and interposed as defenses the same constitutional claims raised in their suit for injunctive and declaratory relief.

The Eastern District of Virginia litigation has been transferred to this Court and consolidated with the Commission enforcement action. The parties have since conducted extensive discovery and agreed upon a comprehensive stipulation of facts supported by three volumes of exhibits. On the basis of this

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[9] The FEC complaint in this Court originally named another non-profit group, the Public Service Research Committee, and its political action committee, as defendants with NRWC. PSRC has since signed a consent decree with the FEC in which it agrees, *inter alia*, to modify its articles of incorporation to include standards for membership.

factual record, both parties have moved for summary judgment.

C. *Statutory Framework*

As noted earlier, the Federal Election Campaign Act is designed to reduce "the actuality and appearance of corruption" in federal elections. One way in which the Act accomplishes this purpose is to limit the financial participation of corporation and labor unions in federal election campaigns. Congress, concerned about the "corroding effect of money employed in elections by aggregated power" has enacted a general prohibition against corporate and union spending in connection with federal elections.[10] Section 441b(a) provides that "[i]t is unlawful . . . for any corporation whatever, or any labor organization to make a contribution or expenditure in connection with any . . . [federal election]."[11] The terms

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[10] *United States v. United Auto Workers*, 352 U.S. 567, 582 (1957).

[11] Section 441b(a) provides in full:

> (a) It is unlawful for any national bank or any corporation organized by authority of any law of Congress, to make a contribution or expenditure in connection with any election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office, or for any corporation whatever, or any labor organization, to make a contribution or expenditure in connection with any election at which presidential and vice presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to, Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices, or for any candidate, political committee, or other person knowingly to accept or receive any contribution prohibited by this section, or any officer

"contribution or expenditure" are defined broadly to include "any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value. . . ." [12]

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or any director of any corporation or any national bank or any officer of any labor organization to consent to any contribution or expenditure by the corporation, national bank, or labor organization, as the case may be, prohibited by this section.

The prohibition contained in this section was originally codified at 18 U.S.C. § 610 and carried criminal penalties. The Federal Election Campaign Act Amendments of 1976 reenacted this section at 2 U.S.C. 441b(a). Pub. L. No. 94-283, § 112, 90 Stat. 475, 486. The 1976 Amendments also gave the FEC the option of pursuing civil remedies on its own or referring the matter to the Attorney General for criminal prosecution. *Id.* at § 109, 90 Stat. 483-84; H. Rep. No. 94-917, 94th Cong., 2d Sess. 3-4 (1976).

NRWC's initial solicitation was made on May 7, 1976, four days before the proscription on corporate expenditures was reenacted in Title 2 and before civil penalties were provided for its violation. The FEC's requests for civil penalties as well as injunctive relief for the May 7 solicitations are nonetheless appropriate. Civil enforcement, in the nature of injunctive relief, was made available for violation of 18 U.S.C. § 610 by the Federal Election Campaign Act Amendments of 1974. Pub. L. No. 93-443, § 208, 88 Stat. 1263, 1284 (1974). Moreover, the imposition of civil penalties under FECA for what was a criminal offense at the time it was committed poses no constitutional questions. *FEC v. Weinsten*, 462 F. Supp. 243, 250-52 (S.D.N.Y. 1978).

[12] Section 441b(b)(2) provides in full:

(2) For purposes of this section and section 791(h) of title 15, the term "contribution or expenditure" shall include any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value (except a loan of money by a national or State bank made in accordance with the applicable

The general prohibition, however, is subject to a limited number of exceptions. One such exception allows corporations, labor organizations, membership organizations, cooperatives, and corporations without capital stock to establish, administer, and solicit contributions to "separate segregated funds to be utilized for political purposes." [13] These organizations, however, may not donate their own money to a fund to be spent for political purposes,[14] nor may they solicit contributions to these funds from the general public. They may solicit contributions only from limited classes of persons connected with the soliciting organization.

The Act allows solicitation in four situations: 1) corporations may solicit their stockholders and stockholders' families, and executive and administrative personnel and their families; 2) labor organizations

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banking laws and regulations and in the ordinary course of business) to any candidate, campaign committee, or political party or organization, in connection with any election to any of the offices referred to in this section, but shall not include (A) communications by a corporation to its stockholders and executive or administrative personnel and their families or by a labor organization to its members and their families on any subject; (B) nonpartisan registration and get-out-the-vote campaigns by a corporation aimed at its stockholders and executive or administrative personnel and their families, or by a labor organization aimed at its members and their families; and (C) the establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes by a corporation, labor organization, membership organization, cooperative, or corporation without capital stock.

[13] 2 U.S.C. § 441b(b)(2)(C).

[14] *See Pipefitters Local Union No. 562 v. United States*, 407 U.S. 385, 428-32 (1972).

may solicit their members and members' families;[15] 3) membership organizations, cooperatives, and corporations without capital stock may solicit their members; and 4) trade associations may solicit the stockholders and executive and administrative personnel of their member corporations.[17] These provisions allowing limited solicitations by certain organizations are specific exceptions to the general prohibition against corporate and union spending in connection with federal elections.

II. LEGAL ANALYSIS

The "membership exception" which allows membership organizations, cooperatives and corporations without capital stock to solicit their members, lies

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[15] 2 U.S.C. § 441b(b)(4)(A) provides:

(4)(A) Except as provided in subparagraphs (B), (C), and (D), it shall be unlawful—

(i) for a corporation, or a separate segregated fund established by a corporation, to solicit contributions to such a fund from any person other than its stockholders and their families and its executive or administrative personnel and their families, and

(ii) for a labor organization, or a separate segregated fund established by a labor organization, to solicit contributions to such a fund from any person other than its members and their families.

[16] 2 U.S.C. § 441b(b)(4)(C) provides:

(C) This paragraph shall not prevent a membership organization, cooperative, or corporation without capital stock, or a separate segregated fund established by a membership organization, cooperative, or corporation without capital stock, from soliciting contributions to such a fund from members of such organization, cooperative, or corporation without capital stock.

[17] 2 U.S.C. § 441b(b)(4)(D).

at the heart of this controversy. In its enforcement action, the FEC has alleged that NRWC, a corporation without capital stock, and ERCC, its separate segregated fund, have solicited contributions from persons who are not members of NRWC.

In their motion for summary judgment NRWC and ERCC raise four defenses against enforcement: 1) that the exemption for solicitations by membership organizations and non-stock corporations is unconstitutionally vague in that key terms are not defined in statute, regulations or advisory opinions; 2) that if the statute is construed broadly—as it must be in order to be constitutional—their solicitations fall within the ambit of the membership exception; 3) that the statutory provisions limiting corporate solicitations to certain classes of persons unconstitutionally abridges the rights to freedom of speech and association by restricting protected communications without a compelling government interest; 4) that the FEC has violated due process in its treatment of the NRWC advisory opinion and investigation.

In its cross-motion, the FEC asserts that the statute is neither vague nor an unjustifiable interference with protected speech and that NRWC has violated the statutory limits on solicitation by corporations by soliciting persons who are neither stockholders, employees, or members of the corporation. The FEC also asserts that the NRWC violations were willful, so that substantial civil penalties are warranted.

A. *NRWC's Vagueness Argument*

A statute is unconstitutionally vague where "men of common intelligence must necessarily guess at its meaning and differ as to its application. . . ." *Connally* v. *Central Construction Co.*, 269 U.S. 385, 391

(1925), quoted in *Cramp* v. *Board of Public Instruction*, 368 U.S. 278, 287 (1961). Vague laws offend due process in that they fail to convey sufficiently definite warning of forbidden acts. They are particularly suspect where speech is involved. "[S]tricter standards of permissible statutory vagueness may be applied to a statute having a potentially inhibiting effect on speech; a man may the less be required to act at his peril here, because the free dissemination of ideas may be the loser." *Smith* v. *California*, 361 U.S. 147, 151 (1959), quoted in *Hynes* v. *Borough of Oradell*, 425 U.S. 610, 620 (1976). The Supreme Court has pointed out, however, in sustaining regulations imposed on political activities, that "there are limitations on being both specific and manageably brief, and . . . although the prohibitions may not satisfy those intent on finding fault at any cost, they are set out in terms that the ordinary man using ordinary common sense can sufficiently understand and comply with. . . ." *Civil Service Commission* v. *National Association of Letter Carriers*, 413 U.S. 548, 578-79 (1973) (upholding regulations promulgated under the Hatch Act). With these guidelines before it, the Court turns to consider NRWC's vagueness claims.

NRWC singles out four terms in section 441b(b)(4) as unconstitutionally vague: "solicit," "corporation without capital stock," "membership organization," and "member." The Committee argues that these terms are too imprecise to support the narrow reading the FEC places on the membership exception. After examining these terms in their statutory context and in light of their general legal connotations, the Court finds that these terms to be sufficiently precise to be applied in this action.

The term "solicit" poses no vagueness problems, even though it is not defined in the statute. It appears in numerous federal statutes without elaboration as to its precise meaning. The Federal Corrupt Practices Act, 18 U.S.C. §§ 602-604, and the proxy provisions of the Securities Exchange Act of 1934, 15 U.S.C. § 78n provide two examples. In the case of the federal election laws, Congress understood "solicitation" to refer to "any action which could fairly be considered a request for a contribution." [18] Its context in the statute supports this definition: section 441b(b)(4)(A) makes it unlawful "to solicit contributions" to a separate segregated fund. Given the express requests for donations to ERCC contained in the 1976 mailings at issue here, the Committee can scarcely claim that its actions were not solicitations.[19] While the outermost boundaries of the word may be uncertain, NRWC's mailings plainly lie at the center rather than on the periphery of its meaning. No standing exists to challenge peripheral uncertainty when the acts in question lie at the heart of the statute's proscriptions. *Broadrick* v. *Oklahoma*, 413 U.S. 601, 608 (1973).

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[18] 122 Cong. Rec. 12200 (1976) (remarks of Rep. Hays). Representative Hays was chairman of the House conferees for the Federal Election Campaign Act Amendments of 1976.

[19] NRWC's reliance on *In re Primus*, 436 U.S. 412 (1978) to demonstrate the vagueness of "solicitation" is misplaced. In *Primus* the Court reversed the reprimand of an ACLU lawyer who had written a letter asking a welfare mother to join a suit against a physician who had sterilized her. The Court acknowledged that the letter was a solicitation, but held it protected by the First and Fourteenth Amendments. 436 U.S. at 439. The Court did not find the Disciplinary Rule at issue vague, but rather overbroad in its application.

Similarly, little question exists as to the meaning of the term "corporation without capital stock." The words express common legal concepts and NRWC demonstrated it understood them when it reincorporated in Virginia as a "corporation without capital stock" under that state's corporation code.[20]

The meaning of the terms "member" and "membership organization" present a closer question. NRWC argues that as they appear in the statute the words do not have a definite meaning which would allow the FEC to say that those persons who respond to the mailings and questionnaires are not members of NRWC, and that NRWC is not a membership organization.[21] Since, whenever possible, a statute should be construed to be constitutional,[22] the Committee contends that both terms must be given a broad reading—at least broad enough to encompass the relationship between NRWC and its supporters—or the statute will be void for vagueness. The Court, however, concludes that, as it appears in this statute, the term "members" has a narrower meaning which is apparent from the statute and its history, and from its general legal understanding.

The membership exception is part of section 441b (b)(4), which sets forth the limited situations under which certain organizations may finance solicitations for contributions to separate segregated funds.

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[20] Va. Stat. Ann. § 13.1-201 *et seq.*

[21] NRWC apparently tries to claim the membership exception as both a corporation without capital stock *and* a membership organization, despite the declaration in its corporate charter that it is, under Virginia law, a corporation without capital stock. Since the Court finds that it has no members, its claim to be a "membership organization" also falls.

[22] *Lynch v. Overholser*, 369 U.S. 705, 710-11 (1962).

The situations described in paragraph (4) are exceptions to the general rule against corporate and union expenditures in connection with federal elections embodied in subsection 441b(a). The first two exceptions, which allow corporations to solicit their stockholders and labor unions their members, were first adopted in 1971, as part of an amendment proposed by Representative Hansen.[23] Congress enacted these exceptions to recognize that corporations and unions might owe "fiduciary" duties to their shareholders and members to undertake political activity to protect the organization's interests.[24] The limits

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[23] This provision, currently codified at 2 U.S.C. § 441b(b)(2) was adopted as an amendment to 18 U.S.C. § 610, the general prohibition against corporate and union spending in federal elections. *See* note 12 *supra*. Since its enactment, it has been amended to allow membership organizations, cooperatives and corporations without capital stock to establish separate segregated funds.

[24] Representative Hansen pointed out the obligation that organizations have to certain persons to undertake political activity:

> First, every organization should be allowed to take the steps necessary for its growth and survival. . . . If an organization, whether it be the NAM, the AMA or the AFL-CIO, believes that certain candidates pose a threat to its well-being or the well-being of its members or stockholders, it should be able to get its views to those members or stockholders. As fiduciaries for their members and stockholders the officers of these institutions have a duty to share their informed insights on all issues affecting their institution with their constituents. Both union members and stockholders have the right to expect this expert guidance.

117 Cong. Rec. 43380 (1971).

The Supreme Court has noted that this "fiduciary" argument provides the basis for allowing limited solicitation by cor-

on corporate and union solicitation are now expressly provided in section 441b(b)(4)(A). The membership exception of 441b(b)(4)(C) at issue here was added in 1976, as was the trade association exception.

"Member" is not defined in the statute, and regulations and advisory opinions clarifying the term had not been adopted when NRWC and ERCC carried out their 1976 solicitations.[25] These interpretive aids,

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porations and labor unions. *See Pipefitters Local 562 v. United States*, 407 U.S. 385, 431 n.42 (1972).

Concerning the proper role of corporations and unions in election campaigns, Hansen stated:

> At the present time there is broad agreement as to the essence of the proper balance in regulating corporate and union political activity required by sound policy and the Constitution. It consists of a strong prohibition on the use of corporate and union treasury funds to reach the general public in support of, or opposition to, Federal candidates and a limited permission to corporations and unions, allowing them to communicate freely with members and stockholders on any subject, to attempt to convince members and stockholders to register and vote, and to make political contributions and expenditures financed by voluntary donations which have been kept in a separate segregated fund. This amendment writes that balance into clear and unequivocal statutory languages.

117 Cong. Rec. 43381 (1971), *quoted in Pipefitters*, 407 U.S. at 431.

[25] The regulatory definition is quoted at footnote 7 *supra*. The FEC has also issued Advisory Opinion 1977-67 (June 28, 1978) which applies the statute and regulations to a specific factual situation. That opinion indicates that the FEC now requires organizations claiming the membership exception to have formal evidence of membership in corporate documents, some form of regular dues structure, and some procedure for members to express their views to the officers (although direct participatory rights are apparently not required). AO 1977-67 at 5.

however, while helpful, are unnecessary in this case since the statutory scheme itself gives a clear indication of what is permitted and what is not. The membership exception is one of a series of exceptions to the no-solicitation rule. Corporations may solicit their shareholders; labor organizations their members. Given the strictures placed on these organizations it is clear that the membership exception must also be limited. Corporations without capital stock are permitted to solicit "members" who stand in a similar relation to non-stock corporations as shareholders stand to stock corporations and union members stand to labor unions. In other words, the term member should not be read to make the membership exception disproportionately broader or narrower than the shareholder exception or the union member exception. "Member" thus encompasses persons who have interests and rights in an organization similar to those of a shareholder in a corporation and a union member in a labor organization. To read the exception more broadly would be to upset the symmetry of the statutory scheme.

The legislative history of the membership exception confirms this limited definition of "member." There is certainly no indication that Congress intended to grant non-stock corporations the ability to solicit a broader class of persons than corporations with stock could solicit. Indeed, Senator Allen, sponsor of the amendment creating the membership exception, explained that the amendment was intended "to cure an omission" by allowing corporations without shareholders to solicit members who stood in their place. 122 Cong. Rec. 7198 (1976). During the floor debate the Senator added that "[t]his amendment was made necessary by the fact that certain types of corporations or organizations do not have stockholders." 122 Cong.

Rec. 12468 (1976) (remarks of Senator Allen). In a subsequent colloquy with Senator Cannon, floor manager of the Federal Election Campaign Act Amendments of 1976, Senator Allen confirmed that the membership exception would apply to all organizations such as mutual insurance companies, which had no shareholders but were instead comprised of policyholders. *Id.* at 12469. These remarks confirm what the face of the statute itself indicates; that in enacting the membership exception Congress intended to allow corporations without stock and membership organizations to solicit persons analogous to shareholders. There was no intent to create a loophole for mass solicitation based on purely philosophical affinity; only a desire to treat equitably organizations which do not fall neatly into the pre-existing union or stock corporation categories.

Despite the clear import of the statute and legislative history, NRWC and ERCC protest that the term "member" is susceptible to such a broad range of meanings that, if the statute is to be constitutional, the term must include those who merely "associate" with the soliciting organization. The term is not as amorphous as they claim. Aside from the statute and legislative history, other sources indicate that "member" has a basic legal significance which is relevant in defining the scope of the statute.

For example, in *Hunt* v. *Washington Apple Advertising Commission*, 432 U.S. 333 (1977), the Supreme Court looked to certain "indicia of membership" to determine whether a state promotional organization had standing to bring an action on behalf of the state's apple growers. Although the agency was not a trade association with members "in the traditional sense," the Court found that the growers "possess[ed] all the

indicia of membership in an organization. They alone elect the members of the Commission; they alone serve on the Commission; they alone finance its activities . . . through assessments levied upon them." 432 U.S. at 344-45.

Similarly in a recent decision in this Court, *Health Research Group* v. *Kennedy*, 82 F.R.D. 21 (1979), Judge John Sirica applied these indicia to determine whether a public interest group had standing to represent purported "members" in a suit against the Food and Drug Administration. The court found that since the "members" did not contribute regularly and had no rights in selecting directors or formulating policy, they could not be considered members of the organization, even for purposes of giving that organization standing to represent them." 82 F.R.D. at 27.

While these indicia do not control the meaning of "member" for purposes of the Federal Election Campaign Act, they do provide guidance in defining the outer bounds of the term as it is used to describe the relationship of a person to an organization. When these indicia are combined with the context in which the term appears in the statute, the basic meaning of the term "member" becomes plain. At the least, it denotes a formal relationship in which a person, whether specifically described as a member or not, has specified rights and obligations vis-a-vis an organization. In addition, "membership" assumes some right to participate in the organization's direction, as well as an obligation to help support the organization through regular financial contributions.[26] Given this meaning, NRWC's and ERCC's challenge to the membership exception must fail. For "[e]ven if the outermost

[26] These standards are not inconsistent with those discussed in FEC Advisory Opinion 1977-67. *See* note 25 *supra*.

boundaries of [the statute] may be imprecise, any such uncertainty has little relevancy here, where [the] . . . conduct falls squarely within the 'hard core' of the statute's proscriptions . . . ." *Broadrick* v. *Oklahoma*, 413 U.S. at 608. Review of the undisputed facts demonstrates that, even using the generous "indicia" from *Hunt*, NRWC has no members and cannot bring itself within the membership exception.

B. *The Membership Exception Claim*

The undisputed facts clearly demonstrate the weakness of NRWC's claim to the membership exception. Neither the corporate documents nor NRWC's relationship with its supporters substantiate the contention that it has members. The corporate charter provides explicitly that the organization "shall not have members." The filings with the Internal Revenue Sevice make the same representation. Nor do any formal corporate documents or the letters sent to prospective supporters describe the qualifications, rights, or obligations of NRWC's purported members.

It is also significant NRWC mailings do not inform a recipient that merely by returning a questionnaire with the proper answers, he or she will be claimed as a member. The letters and questionnaires contain no explicit invitation to become a member and could easily be interpreted as a survey rather than an application. Those who respond with properly completed questionnaires do receive membership cards, but even then, they are not informed as to what membership rights are bestowed, if any, at all.[27]

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[27] Even some of those NRWC claims as members seem to have their doubts about their relationship to the Committee. In the course of discovery, the FEC deposed eleven of NRWC's

In addition to NRWC's failure to formally recognize members, its supporters do not possess any of the attributes of membership which could bring them within the exception. They clearly are not analogous to shareholders or union members. Although NRWC is funded by supporters, there is no obligation to contribute regularly. In fact, one can become and remain a member without contributing at all. Nor do NRWC's supporters exercise any control over the corporation's policy or management, other than in a highly indirect manner by refusing to contribute or by responding to an occasional questionnaire. In short the supporters possess none of the basic criteria of membership in an organization. The membership exception is simply unavailable to NRWC and ERCC. The 1976 solicitations were therefore prohibited corporate solicitations for contributions to a separate segregated fund in violation of the Federal Election Campaign Act, 2 U.S.C. § 441b(b)(4)(i).

In mitigation, NRWC and ERCC argue that the first solicitation, that of May 7, 1976, must be judged on a different standard. They point out that the membership exception was not enacted until May 11, 1976, and that prior to that, the statute contained no reference to corporations without capital stock or membership corporations. Relying on a letter written by then-Assistant Attorney General Richard Thornburgh commenting on a proposed advisory opinion, they argue that the statute then in effect did not prohibit nonprofit corporations from soliciting persons sharing an

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largest contributors; persons who NRWC claimed as "active members" by NRWC's standards. Of these eleven, at least four expressed doubt as to whether they were members. Others were unsure whether they were "active" or "supporting" members. JSF ¶¶ 73-83.

"affinity of interest" with the corporation.[28] The May 7 solicitation, according to NRWC, was thus permissible.

NRWC and ERCC's argument misconstrues the structure of the Federal Election Campaign Act. The Act contains a broad prohibition against all types of corporate spending, subject to a limited number of exceptions. At the time of NRWC's first solicitation, the relevant exceptions allowed corporations to solicit only their stockholders and their families.[29] All other solicitations—including those sent by NRWC to its putative members—were prohibited corporate expenditures in connection with a federal election. Congress' enactment of a membership exception allowing certain organizations to solicit members implicitly confirms that such solicitations were not exempt before May 11, 1976. NRWC's first solicitation must therefore also be considered a violation, since as a corporation, it was subject to the Act's express prohibition in effect at that time.

NRWC and ERCC are no strangers to the federal election laws. They have been represented by the same counsel in FEC matters since well before their initial request for an advisory opinion in January, 1976.[30] Through knowledgeable counsel they have participated in lobbying activity before the FEC concerning the very statutory provisions involved in this case, and have exhibited a thorough familiarity with

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[28] Reply of NRWC and ERCC to Motion of FEC for Summary Judgment at 34.

[29] *See* footnotes 12, 23 *supra*.

[30] *See* Minutes of Meeting of Executive Committee of NRWC, August 8, 1975 at 3, JEB Ex. 58.

the Act's legislative history.[31] Given this knowledge their misapplication of the membership exemption was hardly inadvertent.

NRWC was deliberately organized without members to avoid compliance with requirements imposed on bona fide membership corporations.[32] Moreover, it failed to grant its members any of the privileges normally associated with formal membership in an organization. In light of these explicit and implicit disavowals of membership, invocation of the membership exception is disingenous. In addition, the Court notes that all the facts relevant to NRWC's advisory opinion request were never revealed. NRWC's initial request failed to reveal that its articles specifically precluded members.[33] When it renewed its request, NRWC failed to mention that it had already solicited nearly 70,000 persons.[34] The Committee also failed to inform the FEC that the proposed opinion was based on the erroneous presumption that NRWC formally recognized members in its articles.[35] FEC did not get copies of the articles until after the administrative

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[31] *See* Letter of October 22, 1975 from George Webster to FEC Chairman George Harris commenting on Advisory Opinion 1975-23. Separate Exhibit Binder of FEC, Ex. A; Deposition of Alan Dye, March 30, 1979 at 9-10.

[32] *See* NRWC's and ERCC's Memorandum of Points and Authorities in Support of Motion for Summary Judgment at 48-49, where NRWC argues that under Virginia law, official recognition of members would require NRWC to hold an annual meeting, and that "compliance with such state law requirements would be prohibitively expensive . . . ."

[33] *See* JEB Ex. 7.

[34] *See* JEB Ex. 10.

[35] *See* JEB Ex. 12-14.

complaint had been filed and FEC asked for them in a request for production of documents.[36] The details of NRWC's membership categories and selection process apparently did not surface until the FEC undertook discovery in this lawsuit.[37]

From all these facts it appears that NRWC and ERCC were well aware that they could not qualify for any of the exceptions. They nonetheless proceeded to solicit persons who were not members of NRWC while at the same time concealing from the regulatory agency the true nature of this relationship. Under these circumstances, the Court concludes that there is clear and convincing proof that the violations were "knowing and willful" so as to merit the substantial penalties provided in section 437g(a)(7).[38] This provision has only recently been interpreted by the Court of Appeals for this Circuit to require a finding of " 'defiance' or 'knowing, conscious, and deliberate flaunting' [sic] of the Act." *AFL-CIO* v. *FEC*, No. 78-1937, slip op. at 6, (D.C. Cir. April 1, 1980), quoting *Frank Irey, Jr., Inc.* v. *OSHA*, 519 F.2d 1200, 1207 (3d Cir. 1975). Where the violation

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[36] *See* JEB Ex. 16, 18, 19.

[37] *See* JSF ¶ 57; Deposition of Henry Walther, July 31, 1978.

[38] 2 U.S.C. § 437g(a)(7) provides in relevant part:

> (7) In any civil action for relief instituted by the Commission . . . if the court determines that the Commission has established through clear and convincing proof that the person involved in such civil action has committed a knowing and willful violation of this Act . . . the court may impose a civil penalty of not more than the greater of (A) $10,000; or (B) an amount equal to 200 percent of the contribution or expenditure involved in such violation.

results from a "good faith" mistake and not from intentional wrongdoing, the heavier penalties provided for a section 437g(a)(7) violation are not appropriate. *Id.* at 7-8. The record in this case, however, provides ample proof of a more deliberate violation. Two points, in particular, stand out: NRWC has claimed the membership exception while at the same time proclaiming itself to be without members in nearly every other context. Furthermore, it specifically asked the FEC to sanction its claim without providing that agency with facts highly relevant to a determination. Under these circumstances, NRWC's decision to solicit cannot be viewed as "understandable error." *Cf. AFL-CIO* v. *FEC*, slip op. at 2-4.

C. *Additional Constitutional Claims*

NRWC and ERCC, claim that even if NRWC's supporters are not considered to be members who can be solicited for contributions there are other reasons which bar enforcement. First there is a question of a First Amendment challenge to the general limitations on corporate solicitation embodied in section 441b(b)(4) as applied to them. Second they contend that the FEC's handling of the initial request for an advisory opinion and the subsequent investigation of the administrative complaint violated due process.

1. *Constitutionality of Limitations on Corporate Solicitation in 441b(b)(4)*

The Committee argues that restricting solicitation by non-stock corporations to members directly abridges speech solely on the basis of content. The statute prohibits "solicitations" other than those made to limited classes of persons. NRWC and ERCC define a "solicitation" as "nothing more than a vehicle

whereby facts, a request for a contribution, and opinions of the author are sent to a second person." This, the Committee continues, is precisely the type of political communication that is most clearly protected by the First Amendment. To regulate speech of this type on the basis of content, the government must demonstrate a compelling state interest and legislate with precision. *First National Bank* v. *Bellotti*, 435 U.S. 765, 786 (1978). Secondly, NRWC argues that the prohibition on corporate solicitation interferes with the right to association, which is also protected by the First Amendment under the line of cases beginning with *NAACP* v. *Alabama*, 357 U.S. 449 (1958). The Committee points out that the right to associate is guaranteed by the Constitution and that the right to associate by contributing to political committees is recognized in the federal election law itself.[39] Any effort to limit solicitations to persons who are already members of an organization thus unconstitutionally interferes with the associational rights of non-members who may wish to contribute.

Since both of these rights—communication and association—are clearly protected by the First Amendment, the government may impose restrictions only by showing a compelling interest. *See, e.g., Bellotti*, 435 U.S. at 786; *Buckley*, 424 U.S. at 64-65. Courts have found two interests behind the limitation on corporate expenditures in connection with federal elections. One is the protection of minority shareholders and union members who might disagree with the organization's choice of candidates and who would be "forced" to contribute through corporate earnings or union dues if direct expenditures were permitted.

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[39] 2 U.S.C. § 441a allows political committees to accept contributions and make expenditures on behalf of candidates.

See Pipefitters Local No. 562 v. *United States*, 407 U.S. 385, 414-15 (1972); *United States* v. *Boyle*, 482 F.2d 755, 763-65 (D.C. Cir. 1973); *United States* v. *Chestnut*, 533 F.2d 40, 50, 51 n.12 (2d Cir. 1974), *cert. denied*, 429 U.S. 829 (1976). The second reason advanced is the need to maintain the integrity of federal elections: massive corporate or union spending on behalf of candidates greatly enhances the possibility or public fears that elected officials have been "bought." *See Bellotti*, 435 U.S. at 788-89; *Buckley*, 424 U.S. at 25; *Pipefitters*, 407 U.S. at 415-16.

The Committee asserts that the first interest—protecting minorities—is not present in this case. NRWC members who disagree with corporate policy are free to terminate their association and stop contributing. No adverse economic consequences flow from ending this relationship, unlike the loss that might result if a dissident shareholder sold his holdings. NRWC allows that the second interest—maintaining electoral integrity—may be relevant here but argues that this interest would be served by the less restrictive means of placing limits on corporate contributions rather than banning expenditures outright.[40] Neither interest, NRWC concludes, can justify the abridgment of First Amendment rights created by the section 441b (b)(4) restriction on corporate solicitation, particularly after the Supreme Court's affirmation of the validity of corporate political speech in *Bellotti*.

At the outset, the Court notes that the provision under attack here, is an exception to the general proscription against corporate and union spending in connection with a federal election.[41] NRWC's argu-

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[40] *See Buckley v. Valeo*, 424 U.S. at 26-29.

[41] *See* footnotes 11, 12 *supra*.

ment is in essence an attack on the scope of the exception as too narrow: it infringes on the Committee's right to communicate, and on the constitutional rights of those persons who wish to receive the Committee's message and who may wish to associate with it. However, by arguing for a broader exception, NRWC is in effect attacking the general proscription on corporate spending itself. To permit NRWC to solicit more broadly would be to allow it to spend large amounts to contact the general public. It was precisely this practice that Congress sought to check in enacting the limitation on solicitations in the first instance.[42]

a. *Prior Decisions*

The constitutionality of the general rule against corporate and union expenditures has never been considered by the Supreme Court. Lower federal courts have examined it, however, and in each instance the restriction has been upheld. In *United States* v. *Boyle*, 482 F.2d 755 (D.C. Cir. 1973), the Court of Appeals for this Circuit upheld the conviction of a union official under 18 U.S.C. § 610, the predecessor of the current statute.[43] The Court rejected arguments, similar to those made in this case, that the government's interests in protecting electoral integrity could be advanced by other, less drastic means. 482 F.2d at 763-65.

Again, in *United States* v. *Chestnut*, 394 F. Supp. 581 (S.D.N.Y. 1975), *aff'd*, 533 F.2d 40 (2d Cir. 1976), the same section survived a similar First Amendment attack by a union official. The district

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[42] *See* footnote 24 *supra*.

[43] *See* footnote 11 *supra*.

court found that the statute was supported by a compelling interest in electoral integrity, and that the statute furthered this interest by the least restrictive means possible. In affirming, the Second Circuit explicitly agreed with the district court's reasoning on the constitutional issues and added that "nothing in *Buckley* v. *Valeo*, . . . [citations omitted] . . . is to the contrary." 533 F.2d at 50, 51 n.12. Finally in *FEC* v. *Weinsten*, 462 F. Supp. 243 (S.D.N.Y. 1978), the court considered the constitutionality of the prohibition against corporate and union expenditures, as recodified in Title 2, against a constitutional attack based on both *Buckley* and *Bellotti*. As in the earlier rulings, the court sustained the provision, noting that ". . . the absolute prohibition of corporate contributions constitutes the least drastic means of insuring the integrity of the political process." 462 F. Supp. at 249.

b. *The Impact of Bellotti*

The NRWC nonetheless relies heavily on *First National Bank* v. *Bellotti*, to support its argument that a direct prohibition on solicitation violates the First Amendment because it interferes with the public's right to receive information. The nature of the expenditure involved, however, distinguishes the statute at issue here from the law invalidated in *Bellotti*. There, the Supreme Court struck down a Massachusetts criminal statute barring certain business corporations from making contributions or prohibited expenditures for purposes of "influencing or affecting the vote on any question submitted to the voters, other than one materially affecting any of the property, business or assets of the corporation" as well

as referenda on individual income taxation.[44] After noting that this statute restricted speech solely on the basis of subject matter and the identity of the interest involved, the Court rejected the two "compelling" interests advanced by the state to justify the prohibition. Those interests—the protection of minority interests and the preservation of the integrity of the election process—are the same as those that have been advanced to justify limitations on corporate expenditures in federal elections.

The critical distinction lies in the threat to these interests posed by corporate spending on referenda, as opposed to spending in connection with candidate elections. As the Court pointed out, "[r]eferenda are held on issues, not candidates for public office. The risk of corruption perceived in cases involving candidate elections . . . [citations omitted] . . . simply is not present on a popular vote on a public issue." 435 U.S. at 790. As the NRWC's solicitation letters themselves reveal, the Committee's solicitation efforts were in connection with the 1976 federal elections. The interest in protecting public confidence in elections, absent in *Bellotti*, is fully present here.[45] Accord-

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[44] Mass. Gen. Laws Ann., ch. 55, § 8 (West Supp. 1977), *cited in First National Bank v. Bellotti*, 435 U.S. at 768 n.2 (1978).

[45] A second factor sets this case apart from *Bellotti*. As the Supreme Court pointed out, the Massachusetts referendum law had the effect of excluding certain points of view—those of banks and certain other corporations—from debates on public issues. 435 U.S. at 784. The Court stated, "[w]here, as here, the legislature's suppression of speech suggests an attempt to give one side of a debatable public question an advantage in expressing its view to the people, the First Amendment is plainly offended." *Id.* at 785-86 (footnote omitted).

In contrast, to the extent that the federal statute challenged here regulates speech, it does so evenhandedly. No

ingly, the reasoning and results of earlier cases sustaining prohibitions on corporate expenditures control here in an attack on the scope of an exception to that prohibition. The government has a compelling interest in protecting the integrity of federal elections which justifies section 441b(b)(4)'s limitations. Since preserving the citizen's confidence in government is an interest of the "highest importance," *Bellotti*, 435 U.S. at 789, the Court finds that this interest alone is sufficiently compelling to sustain any restriction on free speech created by the limitation on corporate solicitations at issue here.

NRWC's associational rights claim falls before the same compelling interest. "Neither the right to associate nor the right to participate in political activities is absolute in any event." *Civil Service Commission* v. *National Association of Letter Carriers*, 413 U.S. 548, 567 (1973). *See Buckley*, 424 U.S. at 25. Any infringement on the associational right asserted here—the right to join together to contribute to the National Right to Work Committee's political action fund—is scarcely of the magnitude of that at issue in *Letter Carriers*. There the Supreme Court reaffirmed the constitutionality of the Hatch Act's prohibition on government employee's participation in political campaigns. 413 U.S. at 553, 567. In contrast, NRWC's supporters and sympathizers are still free to exercise a full range of political and associational rights on behalf of NRWC and its goals. And to the extent the statute restricts the Committee's ability to solicit, it represents a marginal infringement on these rights and is fully justified by the need

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single viewpoint is aided or prejudiced; membership organizations and non-stock corporations of all types, as well as business corporations and labor unions, all face similar restrictions on their ability to solicit.

to protect the electoral process. In sum, section 441b (b) (4) cannot be considered an unconstitutional infringement on the right of free speech or association guaranteed by the First Amendment.

2. *Due Process Claims*

As a final defense to the FEC's enforcement efforts NRWC presents a due process challenge based on the entire history of this matter beginning with its initial request for an advisory opinion. The Committee argues that the FEC delay in responding to the request for the advisory opinion, the resistance to compromise in the conciliation process, and partisan influences on the processing of the advisory opinion and administrative complaint combine to vitiate the enforcement action. There is little merit in any of these claims.

NRWC requested an advisory opinion on January 6, 1976. As previously noted, on January 30, *Buckley* invalidated the Commissioner selection process and otherwise denied the Commission's authority to act. That authority was not restored until May 11, 1976, when Congress passed the Federal Election Campaign Act Amendments of 1976. The NRWC was advised of the reasons for the delay and was invited to resubmit its request after proposed regulations had been issued.[46] The request was renewed and the FEC staff drafted an advisory opinion. The draft was withdrawn, however, when the staff learned that NRWC's own corporate documents provided that it would have no members.[47] Shortly thereafter, a complaint was filed with the FEC alleging that NRWC had violated the Act by soliciting non-members—the very practice for which NRWC had sought

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[46] *See* JEB Ex. 9.

[47] *See* footnote 8 *supra*.

the advisory opinion. Action on the request was then suspended pending the outcome of the administrative complaint. As these facts indicate, the delay in processing the advisory opinion was due in part to circumstances beyond the agency's control, and in part to NRWC's own failure to provide all of the relevant material.

The argument that NRWC was denied conciliation finds no support in the record. The parties engaged in prolonged conciliation efforts, extending to at least four months beyond the 30 day minimum required by the statute. Both sides offered proposals and counterproposals.[48] Merely because NRWC failed to get a favorable result in conciliation does not amount to a denial of due process. The statute requires a conciliation period, it does not require settlement.

Finally, NRWC argues that the partisan political motives of "pro-labor" Commissioner Thomas Harris and certain staff members prevented NRWC from receiving a prompt ruling on its advisory opinion request and resulted in overzealous prosecution of the administrative complaint. This claim was rejected by an earlier Court order of May 4, 1979. No sufficient reasons have been advanced to change that ruling. The suggestions of bias in the handling of the administrative complaint overlook the fact that the Commissioners voted unanimously to find "reasonable cause" to believe NRWC had violated the law and later, after a staff investigation, to find "probable cause" a violation had occurred. Neither the advisory opinion process followed here nor the investigation denied NRWC's right to due process so as to

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[48] NRWC's and ERCC's Memorandum of Points and Authorities in Support of Motion for Summary Judgment 39-41.

prevent the Court from finding that NRWC violated the Federal Election Campaign Act.

CONCLUSION

To summarize briefly: the limited exception allowing corporations without capital stock to solicit their members for contributions is not unconstitutionally vague and the limits on corporate solicitation do not violate the rights to free speech and association secured by the First Amendment. Further, NRWC and ERCC have violated the Federal Election Campaign Act by soliciting contributions from persons who were not members of NRWC. Finally, the Court finds the violations to be "knowing and willful" in that NRWC, in an effort to secure an advisory opinion sanctioning these solicitations, failed to reveal highly pertinent facts which tended to disprove its entitlement to the exception it claimed.

Under these circumstances, the Court concludes that the Federal Election Commission is entitled to the following relief: 1) a declaration that the challenged provisions of FECA are constitutional; 2) an order enjoining NRWC and ERCC from soliciting persons for contributions to ERCC or any other separate segregated fund in violation of FECA; 3) an order requiring NRWC and ERCC to refund all money collected as a result of the unlawful 1976 solicitations; and 4) the assessment of a civil penalty against NRWC and ERCC in the amount of $10,000.00.

An appropriate ORDER accompanies this Memorandum Opinion.

Entered: April 24, 1980

/s/ Barrington D. Parker
BARRINGTON D. PARKER
United States District Judge

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 77-2175

FEDERAL ELECTION COMMISSION, PLAINTIFF

v.

NATIONAL RIGHT TO WORK COMMITTEE, ET AL., DEFENDANTS

Civil Action No. 78-0315

NATIONAL RIGHT TO WORK COMMITTEE, ET AL., PLAINTIFFS

v.

FEDERAL ELECTION COMMISSION, ET AL., DEFENDANTS

[Filed Apr. 24, 1980]

ORDER AND JUDGMENT

In accordance with the accompanying Memorandum Opinion entered in these consolidated cases, it is this 24th day of April, 1980

ORDERED, ADJUDGED AND DECLARED that

1. The motion of the Federal Election Commission (FEC) for summary judgment is granted and judgment is entered for the FEC; and the motion of the National Right to Work Committee (NRWC) and the Employee Rights Campaign Committee (ERCC) for summary judgment is denied and the complaint in Civil Action No. 78-0315 is dismissed with prejudice;

2. The provision of the Federal Election Campaign Act limiting corporate solicitations (2 U.S.C. § 441b (b)(4)) does not abridge the First Amendment rights of free speech and association, and the provision limiting solicitations by corporations without capital stock (2 U.S.C. § 441b(b)(4)(C)) is not unconstitutionally vague so as to bar application of these provisions to NRWC and ERCC;

3. The $77,616.87 received by ERCC in response to NRWC's and ERCC's solicitations of May 7, June 21, and September 9-15, 1976, was the product of corporate solicitations made in violation of the Federal Election Campaign Act, 2 U.S.C. § 441b(b)(4)(A)(i);

4. NRWC and ERCC are enjoined from making further solicitations for contributions from persons other than those prescribed by 2 U.S.C. § 441b(b)(4)(A)(i);

5. Within thirty (30) days of the date of this Order and Judgment, NRWC and ERCC shall refund the $77,616.87 received as a result of the unlawful solicitations of May 7, June 21, and September 9-15, 1976. Each refund shall be accompanied by a copy of this Order and Judgment and a notice stating unequivocally that the refund is being made pursuant to the Order of this Court to remedy NRWC's and ERCC's violations of the Federal Election Campaign Act;

6. A civil penalty in the amount of ten thousand dollars ($10,000.00) is imposed on NRWC and ERCC pursuant to 2 U.S.C. § 437g(a)(7). NRWC and ERCC shall pay the sum of ten thousand dollars ($10,000.00) to the Clerk of this Court within ten

(10) days after the entry of this Order and Judgment; and

7. FEC is awarded its costs in this action.

/s/ Barrington D. Parker
BARRINGTON D. PARKER
United States District Judge

APPENDIX D

2 U.S.C. § 441b. *Contributions or expenditures by national banks, corporations, or labor organizations*

(a) It is unlawful for any national bank, or any corporation organized by authority of any law of Congress, to make a contribution or expenditure in connection with any election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office, or for any corporation whatever, or any labor organization, to make a contribution or expenditure in connection with any election at which presidential and vice presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to, Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices, or for any candidate, political committee, or other person knowingly to accept or receive any contribution prohibited by this section, or any officer or any director of any corporation or any national bank or any officer of any labor organization to consent to any contribution or expenditure by the corporation, national bank, or labor organization, as the case may be, prohibited by this section.

(b) (1) For the purposes of this section the term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(2) For purposes of this section and section 79*l*(h) of title 15, the term "contribution or expenditure" shall include any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value (except a loan of money by a national or State bank made in accordance with the applicable banking laws and regulations and in the ordinary course of business) to any candidate, campaign committee, or political party or organization, in connection with any election to any of the offices referred to in this section, but shall not include—

(A) communications by a corporation to its stockholders and executive or administrative personnel and their families or by a labor organization to its members and their families on any subject;

(B) nonpartisan registration and get-out-the-vote campaigns by a corporation aimed at its stockholders and executive or administrative personnel and their families, or by a labor organization aimed at its members and their families; and

(C) the establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes by a corporation, labor organization, membership organization, cooperative, or corporation without capital stock.

(3) It shall be unlawful—

(A) for such a fund to make a contribution or expenditure by utilizing money or anything of value secured by physical force, job discrimination, financial reprisals,

or the threat of force, job discrimination, or financial reprisal; or by dues, fees, or other moneys required as a condition of membership in a labor organization or as a condition of employment, or by moneys obtained in any commercial transaction;

(B) for any person soliciting an employee for a contribution to such a fund to fail to inform such employee of the political purposes of such fund at the time of such solicitation; and

(C) for any person soliciting an employee for a contribution to such a fund to fail to inform such employee, at the time of such solicitation, of his right to refuse to so contribute without any reprisal.

(4) (A) Except as provided in subparagraphs (B), (C), and (D), it shall be unlawful—

(i) for a corporation, or a separate segregated fund established by a corporation, to solicit contributions to such a fund from any person other than its stockholders and their families and its executive or administrative personnel and their families, and

(ii) for a labor organization, or a separate segregated fund established by a labor organization, to solicit contributions to such a fund from any person other than its members and their families.

(B) It shall not be unlawful under this section for a corporation, a labor organization, or a separate segregated fund estab-

lished by such corporation or such labor organization, to make 2 written solicitations for contributions during the calendar year from any stockholder, executive or administrative personnel, or employee of a corporation or the families of such persons. A solicitation under this subparagraph may be made only by mail addressed to stockholders, executive or administrative personnel, or employees at their residence and shall be so designed that the corporation, labor organization, or separate segregated fund conducting such solicitation cannot determine who makes a contribution of $50 or less as a result of such solicitation and who does not make such a contribution.

(C) This paragraph shall not prevent a membership organization, cooperative, or corporation without capital stock, or a separate segregated fund established by a membership organization, cooperative, or corporation without capital stock, from soliciting contributions to such a fund from members of such organization, cooperative, or corporation without capital stock.

(D) This paragraph shall not prevent a trade association or a separate segregated fund established by a trade association from soliciting contributions from the stockholders and executive or administrative personnel of the member corporations of such trade association and the families of such stockholders or personnel to the extent that such solicitation of such stockholders and personnel, and their families, has been separately

and specifically approved by the member corporation involved, and such member corporation does not approve any such solicitation by more than one such trade association in any calendar year.

(5) Notwithstanding any other law, any method of soliciting voluntary contributions or of facilitating the making of voluntary contributions to a separate segregated fund established by a corporation, permitted by law to corporations with regard to stockholders and executive or administrative personnel, shall also be permitted to labor organizations with regard to their members.

(6) Any corporation, including its subsidiaries, branches, divisions, and affiliates, that utilizes a method of soliciting voluntary contributions or facilitating the making of voluntary contributions, shall make available such method, on written request and at a cost sufficient only to reimburse the corporation for the expenses incurred thereby, to a labor organization representing any members working for such corporation, its subsidiaries, branches, divisions, and affiliates.

(7) For purposes of this section, the term "executive or administrative personnel" means individuals employed by a corporation who are paid on a salary, rather than hourly, basis and who have policymaking, managerial, professional, or supervisory responsibilities.

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Joint Appendix

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No. 81-1506

In the Supreme Court of the United States

OCTOBER TERM, 1981

FEDERAL ELECTION COMMISSION, *et al.*, PETITIONERS,

v.

NATIONAL RIGHT TO WORK COMMITTEE, *et al.*,
RESPONDENTS.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED FEBRUARY 10, 1982
CERTIORARI GRANTED APRIL 5, 1982

In the Supreme Court of the United States

OCTOBER TERM, 1981

No. 81-1506

FEDERAL ELECTION COMMISSION, *et al.*, PETITIONERS,

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

No. 77-0786

NATIONAL RIGHT TO WORK COMMITTEE, INC., ET AL.,
PLAINTIFFS

v.

THE FEDERAL ELECTION COMMISSION, ET AL.,
DEFENDANTS

CHRONOLOGICAL LIST OF
RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
1977	
Oct 20	COMPLAINT—filed.
Oct 21	SUMMONS (Orig. & 11) issued and given to Marshal for service.
Dec 20	NOTICE returnable 1-20-78 together with MOTION to dismiss; POINTS and authorities in support of same—filed by Deft. Federal Election Commission.
1978	
Jan 30	AMENDMENTS to the complaint—filed by pltfs.
Jan 30	POINTS and AUTHORITIES in opposition to deft.'s motion to dismiss—filed by pltfs.
Jan 31	PRETRIAL ORDER—entered & filed. (AVB) All discovery to be completed by 4-14-78. Formal pretrial set for 4-20-78 at 2:40p.m.—copies mailed to counsel.
Feb 6	AMENDED motion to dismiss and reply to pltf.s' opposition to deft.s' motion to dismiss—filed by Federal Election Commission.

DATE	PROCEEDINGS
1978	
Feb 9	REPLY to Defts. amended Motion to dismiss and reply to Pltfs'. opposition to Defts'. Motion to dismiss—filed by Pltfs.
Feb 10	TRIAL PROCEEDINGS: (ORL) (Reporter-Hospadore) This matter came on for hearing on motion of U.S. to dismiss. Appearances of counsel. Motion argued and taken under advisement.
Feb 17	STIPULATION & ORDER dismissing Bell, Atty. Gen. of the U.S. as a deft.—ent. & filed. Copies sent. (ORL) bd
Feb 17	ORDER transferring case to the U.S.D.C. for the District of Columbia entered—filed. Copies sent. (ORL) jd
Feb 21	COMPLETE case filed together with certified copies of the Order of Transfer and docket entries sent to the U.S.D.C. for the District of Columbia. jd

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

No. 77-2175

FEDERAL ELECTION COMMISSION, PLAINTIFFS

v.

NATIONAL RIGHT TO WORK COMMITTEE, ET AL.

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
1977	
Dec 21	COMPLAINT, appearance.
Dec 21	SUMMONS (4) and complaint (4) issued. All defts. ser 12-27-77
1978	
Feb 21	ANSWER by defts. #1 & #2 to the complaint; c/m 2-21-78.
Feb 21	ANSWER by defts. #3 & #4 to the complaint; Appearance of Thomas J. Schwartz & Daniel J. Piliero, II.
Apr 07	STATUS CALL: Federal Election Commission needs additional time to complete discovery; Mr. Dye is to supply Court with copies of the complete file in CA 78-0315 for use in chambers; the question of consolidating of CA 78-0315 and CA 77-2175 was not ruled on. (Rep: Eugene Olsen) PARKER, J.
Apr 14	ORDER filed 4-11-78 consolidating CA 77-2175 with CA 78-0315. (N) PARKER, J.

DATE	PROCEEDINGS
1978	
May 10	COPY of stipulation of parties that attached file presented to Judge Parker pursuant to status call of April 7, 1978 contains a true copy of each document; a copy of the above-described file has been left in chambers as Judge Parker's working file (see stipulation for further details) (Orig filed in CA 78-0315)
May 10	SUPPLEMENTAL response of pltf. to the interrogatories and request for production of documents of The National Right to Work Committee and Employee Rights Campaign Committee and The Public Service Research Council and Public Service Action Committee.
May 10	MOTION by defts. #3 & #4 and David Denholm to amend the answer, for summary judgment dismissing the complaint, and for a preliminary injunction and consolidated and expedited trial of the counterclaims; statement pursuant to Rule 1-9(h); exhibit (amended answer & counterclaims); affidavit of * * *.
June 01	POINTS & AUTHORITIES by pltf. in support of motions compelling defts. to produce documents and answer interrogatories.
June 07	OPPOSITION of pltf. to motion of defts. #3 & #4 for summary judgment and for a preliminary injunction; statement of genuine issues; exhibits 1 thru 20 (in large bound volume).
Aug 07	MOTION by defts. #1 & #2 to dismiss the complaint in CA 77-2175; P&A's; exhibits A, B & C.
Aug 16	MOTION by pltfs. to dismiss complaint of pltf. against defts. #1 & #2; table of contents.

DATE	PROCEEDINGS
1978	
Aug 17	OPPOSITION of pltf. to motion of defts. #1 & #2 to dismiss; appendix A.
Aug 25	NOTICE by Pltff. of Withdrawal of Motion for Preliminary Injunction and Request for hearing upon motion. (Original filed in 77-2175).
Aug 25	REPLY by Defts. 1 & 2 to Federal Election Commission's Opposition to Motion to Dismiss.
Aug 29	MOTION of Federal Election Commission to compel, denied. (OTEP) (by Mr. Harper & Mr. Canter) (Rep. Eugene Olsen) Parker, J.
Aug 31	CONSENT ORDER filed 8-28-78 agreeing that this Court has jurisdiction over the captioned cases; that Public Service Research Council and Public Service Political Action Committee shall pay to the Clerk of the Court within 10 days a civil penalty in the amount of Thirty-Five Hundred Dollars ($3,500.000) made payable to the Treasurer of the U.S.; that parties shall bear their own costs. (N) Parker, J.
Sept 05	ORDER filed 9-1-78 denying motion of pltf. to compel discovery in all respects. (N) PARKER, J.
Sept 06	DEPOSIT by Defts 3 & 4 of Three thousand five hundred dollars ($3,500.00) in the Treasury of the United States pursuant to order of 8-28-78.
Oct 17	ORDER filed 10-16-78 that Assistant General Counsel Spiegal shall be deposed as to possible bias by the FEC against NRTW and ERCC and Assistant General Counsel Litchfield shall be deposed as to the question of delay in the issuance of the relevant advisory opinion; and prohibiting defts. from seeking to have the FEC produce documents which the Commission has already produced for defts. (N) PARKER, J.

DATE	PROCEEDINGS
1978	
Oct 17	ORDER filed 10-16-78 denying motion of defts. NRTW & ERCC for a protective order except insofar as the Court orders that any depositions taken of ERRC contributors shall be sealed until further order of the court. (N) PARKER, J.
Nov 03	ORDER filed 11-2-78 granting motion of the National Right to Work Committee and Employee Rights Campaign Committee to file their opposition to the motion Federal Election Commission to compel answers to interrogatories and to produce documents and that the Clerk of the Court shall accept the opposition for filing. (N) PARKER, J.
Nov 03	POINTS & authorities by defts. #1 & #2 in opposition to motion of pltf. to compel defts. #1 & #2 to answer interrogatories and produce documents; affidavit of Henry L. Walther.
Nov 06	REPLY of pltf. to opposition of defts. #1 & #2 to motion of pltf. to compel.
Nov 13	RESPONSE by defts. #1 & #2 to reply of pltf. to opposition of defts. #1 & # to motion of pltf. to compel; supplemental affidavit of Henry L. Walther.
Dec 06	ORDER filed 12-5-78 denying motion of F.E.C. to compel as to interrogatories (second set) 1, 2, & 3 and granting motion as to interrogatories 4, 5, & 6, defts. to compel by 12-29-78. (N) PARKER, J.
Dec 06	MOTION by defts. #1 & #2 for leave of Court to amend their answer in CA 77-2175 and and for National Right to Work Committee, et al. to amend complaint in C.A. 78-0315; P&A's.

DATE	PROCEEDINGS
1978	
Dec 20	ORDER filed 12-15-78 denying motion of Federal Election Commission for a Protective order. (N) PARKER, J.
Dec 20	ORDER filed 12-15-78 denying motion of National Right to Work Committee and Employee Right Campaign Committee for a protective Order. (N) PARKER, J.
1979	
Feb 23	ORDER filed 2-22-79 denying motion of NRWC for a protective order. (N) PARKER, J.
May 9	ORDER filed 5-4-79 granting motions of FEC for protective order, vacating relevant notices of deposition & prohibiting NRWC, et al from deposing William C. Oldaker, Charles N. Steele and Lawrence M. Noble. (N) Parker, J.
May 10	ORDER filed 5-8-79 granting motion of Federa Election Commission for reschedule of the pretrial and setting on 10-19-79 at 11:00. (N) Parker, J.
May 30	NOTICE to Counsel setting a status conference for 6-29-79 at 10:30 A.M.; counsel shall file by 6-25-79 a memoranda setting forth certain information relating to discovery. (N) Parker, J.
June 6	ORDER filed 6-5-79 denying motion of pltff. for protective order; and directing that depositions shall be scheduled & taken at time mutually convenient before 6-25-79. (N) Parker, J.
June 27	ORDER filed June 26, 1979 directing that the information provided by NRWC and ERCC in response to interrogatory No. 21 by FEC (third set) shall be placed under seal until further notice from the Court. (N) Parker, J.

DATE	PROCEEDINGS
1979	
June 29	STATUS CALL. Counsel for both parties will file stipulation of disputed & undisputed facts by 7-18-79; cross-motions for summary judgment to be filed by 8-6-79 with any replies by 8-31-79; FEC may need to take depositions of Mr. Walter & Mr. Halson; oral motion of NRWC to have answer to interrogatory No. 21 and above mentioned depositions placed under seal, heard & granted. (Rap. Al Gasdor) Parker, J.
Aug 1	ORDER filed July 27, 1979 revising schedule for submission; joint stipulation of facts to be submitted by 8-3-79; cross-motions for summary judgment to be filed by 8-31-79; replies are to be submitted by 10-1-79. (N) Parker, J.
Aug 7	REQUEST by all parties to place under seal master list to depositions of persons considered by NRWC to be its members; master list attached. (sealed and placed in Rm. 1800)
Aug 10	EXHIBITS to Joint Stipulation filed 8-7-79 (Volumes I, II, III).
Aug 7	JOINT stipulation of facts (introduction); joint exhibit binder.
Aug 7	JOINT stipulation of facts.
Aug 31	MOTION of pltf. for summary judgment; statement of material facts; exhibit (P&A's); exhibits A and B.
Aug 31	MOTION of National Right to Work Committee and Employee Rights Campaign Committee */ for summary judgment and for declaratory and injunctive relief; exhibit (P&A's); statement of material facts; index; exhibits A-U.

DATE	PROCEEDINGS
1979	
Sept 05	MEMORANDUM of points and authorities in support of motion of National Right to Work Committee, and Employee Rights Campaign Committee for summary judgment and for declaratory and injunctive relief; table of authorities.
Sept 05	POINTS and authorities in support of the Federal Election Commission's motion for summary judgment; table of contents; table of cases and authorities.
Oct 5	ORDER filed Oct. 3, 1979 extending time to 10-5-79 for the parties to respond to the motions for summary judgment. (N) Parker, J.
Oct 5	MEMORANDUM of P&A's by The Federal Election Commission in opposition to NRWC and Employee Rights Campaign Committee's motion for summary judgment.
Oct 5	RESPONSE by Federal Election Commission to NRWC and Employee Rights Campaign Committee's Local Rule 1-9(h) statement.
Oct 5	REPLY of NRWC and Employee Rights Campaign Committee to Federal Election Commission's Local Rule 1-9(h) Statement of Material Facts as to which there is no genuine dispute.
Oct 5	REPLY of NRWC and Employee Rights Campaign Committee to motion of Federeal Election Commission for summary judgment; Appendix C (3 copies of C only).
Nov 19	CROSS-MOTIONS for summary judgment, argued and taken under advisement; any post hearing memo to be filed by 11-26-79; proposed findings & conclusions of law to be submitted to Chambers but not filed by 12-3-79. (Rep. Eugene Olson) Parker, J.

DATE	PROCEEDINGS
1979	
Nov 21	JOINT motion of The Federal Election Comm., the NRWC and the Employee Rights Campaign Comm. for an extension of time within which to submit responses to arguments for summary judgment heard on Nov. 19, 1979 and to file findings of fact and conclusions of law.
Nov 23	ORDER filed Nov. 21, 1979 granting joint motion for extensions of time to 12-3-79 to file responses to arguments put forth at oral arguments for cross-motions for summary judgment, and extending to 12-10-79 time to file findings of fact & conclusions of law. (N) Parker, J.
Dec 3	REPLY by the Federal Election Commission to the NRWC's and Employee Rights Campaign Committee's oral argument of Nov. 19, 1979 in support of their motion for summary judgment.
Dec 6	POST ARGUMENT Submissions of NRWC and ERCC: Exhibit 1, "Let this be filed." (FIAT) Parker, J.
Dec 5	REPLY by Federal Election Commission to the NRWC and ERCC's post argument submission of exhibits.
Dec 10	PROPOSED findings of fact and conclusions of law submitted by NRWC and ERCC.
Dec 14	SUBMISSION by NRWC and ERCC of excerpt of exhibits previously submitted with post-argument submission and response to Federal Election Commission's reply to post-argument submissions; Exhibit I, Exhibit IIw/Tab C, D, E & O (one large volume).
1980	
Apr 25	MEMORANDUM OPINION filed 4-24-80. (N) PARKER, J.

DATE	PROCEEDINGS
1980	
Apr 25	ORDER & JUDGMENT filed 4-24-80 granting motions of Federal Election Commission for summary judgment and judgment is entered for the FEC, and the motion of the National Right to Work Committee (NRWC) & Employee Rights Campaign Committee (ERCC) for summary judgment is denied and the complaint in CA 78-315 is dismissed with prejudice; the provisions of Federal Election Campaign Act limiting corporate solicitations does not abridge the 1st Amendment rights of free speech and association, and the provisions limiting solicitations by corporations without capital stock is not unconstitutionally; directing that the $77,616.87 received by ERCC in response to ERCC solicitations of May 7, June 21, and Sept. 9-15, 1976 was the product of corporate solicitation made in violation of Federal Election Campaign Act; enjoining NRWC & ERCC from making further solicitations for contributions from persons other than those prescribed by 2 USC 441(b)(4)(A)(i); directing that within 30-days of the date of this order, NRWC & ERCC shall refund the $77,616.87 received; imposing a civil penalty in the amount of Ten Thousand Dollars ($10,000.00) on NRWC & ERCC pursuant to 2 USC 437g(a)(7), and NRWC & ERCC shall pay the sum to the Clerk within 10-days after the entry of this order; and the awarding costs to FEC. (N) PARKER, J.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

No. 78-0315

NATIONAL RIGHT TO WORK COMMITTEE, INC., ET AL.,
PLAINTIFFS

vs.

THE FEDERAL ELECTION COMMISSION, ET AL.,
DEFENDANTS

Federal Election Campaign Act (2 USC Section 431, et seq.) Transferred from U.S. District Court for the Eastern District of Virginia, Alexandria Division.

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
1978	
Feb 24	CERTIFIED copy of docket entries and original file received from the U.S. District Court for the Eastern District of Virginia, Alexandria Division.
Feb 24	CERTIFIED copy of Order transferring case from the U.S. District Court for the Eastern District of Virginia, Alexandria Division to the U.S. District Court for the District of Columbia. LEWIS, J.
Feb 28	REASSIGNMENT of case from Judge Robinson to Judge Parker. PRATT, J.
Aug 24	NOTICE by Pltffs. of withdrawal of motion for Preliminary Injunction and Request for hearing upon Motion.

* * * *

NOTE: Duplicate docket entries already noted in 77-2175 have been deleted.

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 80-1487

NATIONAL RIGHT TO WORK COMMITTEE, INC., ET AL., APPELLANTS

v.

FEDERAL ELECTION COMMISSION, ET AL., APPELLEES

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

DATE	FILINGS—PROCEEDINGS
(B) 05-07-80	Copy of notice of appeal and docket entries from District Court (n-2)
(C) 07-21-80	Certified Original Record (6 volumes) (no transcript) (n-2) & 1 Box exhibits
(C) 07-21-80	Part of Certified Original Record with 3 sealed envelopes (n-2) *UNDER SEAL IN VAULT*
(B) 08-12-80	Clerk's order, sua sponte, that No. 80-1487 and 80-1488 are consolidated
(T) 09-15-80	15-Appellants' brief (p-15)
(T) 09-15-80	7-Joint Appendix (Volumes I thru III) (p-15)
(T) 11-24-80	15-Appellee's brief (m-17)
(T) 11-24-80	15-Statutes and Regulations (m-17)
(T) 12-04-80	15-Appellants' reply brief (m-4)
(B) 04-27-81	Clerk's order, sua sponte, that the following times are allotted for the oral argument of these cases: Appellants—20 minutes; Appellees—20 minutes.
(V) 05-18-81	4-Letter from counsel for Nat'l Right to Work Comm., et al. asking for permission to use charts at oral argument (p-18)

DATE	FILINGS—PROCEEDINGS
(B) 05-19-81	Argued before Tamm*, CJ, and Homer Thornberry, US Senior Circuit Judge for the USCA for the Fifth Circuit, and Wilkey, CJ
(B) 05-20-81	Clerk's order that the motion of appellant for permission to use charts at oral argument is denied
(S) 09-04-81	Opinion for the Court filed by Senior Circuit Judge Thornberry
(S) 09-04-81	Judgment that the judgment of the District Court is reversed, in accordance with the opinion of this Court filed herein this date
(V) 09-17-81	1-Appellant's (Nat'l Right to Work Committee) bill of costs (m-17)
(C) 09-23-81	Per Curiam order granting motion of FEC to extend time to file petition for rehearing and/or suggestion for rehearing en banc to 10/18/81; Tamm, CJ; Thornberry, SCJ, USCA for the Fifth Circuit; and Wilkey, CJ
(V) 10-02-81	4-Appellants' motion for attorneys' fees and expenses and brief and affidavits in support of motion (p-2)
(V) 10-09-81	4-FEC's motion to hold motion for attorney fees award in abeyance (m-9)
(V) 10-19-81	15-FEC's petition for rehearing, and suggestion for rehearing en banc (m-19)
(B) 11-13-81	Per Curiam order that FEC's petition for rehearing is denied; Tamm and Wilkey, CJ's; and Homer Thornberry, Senior Circuit Judge, USCA for the Fifth Circuit
(B) 11-13-81	Per Curiam order, en banc, that FEC's suggestion for rehearing, en banc, is denied; CJ Robinson, Wright, Tamm, MacKinnon, Robb, Wilkey, Wald, Mikva, Edwards and Ginsburg, CJ's (CJ's Wright, Wald, Mikva, Edwards and Ginsburg would grant the suggestion for rehearing, en banc)

DATE	FILINGS—PROCEEDINGS
(S) 11-23-81	Certified copy of judgment, copy of opinion and certified bill of costs to the amount of $2040.75 issued to District Court.
(G) 11-23-81	4-Appellee's (FEC) opposition to motion for attorneys' fees and expenses (m-23)
(B) 01-19-82	Per Curiam order that the Clerk is directed to file appellants' lodged reply to opposition to motion for attorney's fees, and to note the docket accordingly; and that appellee's motion to hold request for attorney's fees in abeyance is denied; and that each party herein shall bear its own expenses, including attorneys' fees and costs; Tamm, CJ; Thornberry, Senior Circuit Judge, USCA for the Fifth Circuit; and Wilkey, CJ
(B) 01-19-82	4-Appellants' reply to memorandum of FEC in opposition to appellants' motion for attorney's fees and expenses (m-3)—filed per above order
(S) 01-25-82	Certified copy of 1-19-82 order issued to District Court
(V) 02-16-82	Receipt dated 02/16/82 from Clerk, District Court for Certified Original Record (6 vols.); Exceptions: no exhibits, part of certified original record under seal
(V) 03-02-82	Receipt dated 03/02/82 from Clerk, District Court for Part of Certified Original Record With 3 sealed envelopes, *UNDER SEAL FROM VAULT*
(V) 03-02-82	Notification from Clerk, Supreme Court that petition for writ of certiorari was filed on 02/10/82 in Sc No. 81-1506
(C) 04-07-82	Certified copy of order from Clerk, Supreme Court granting petition for writ of certiorari in SC No. 81-1506 on April 5, 1982

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 80-1488

FEDERAL ELECTION COMMISSION, APPELLEE

v.

NATIONAL RIGHT TO WORK COMMITTEE, ET AL., APPELLANTS

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

DATE	FILINGS—PROCEEDINGS
(B) 05-07-80	Copy of notice of appeal and docket entries from District Court (n-2)
(B) 05-07-80	Docket fee was paid in the District Court on 05-06-80
(E) 08-06-80	Certified Original Record (6 volumes) including 1 box containing exhibits; 2 vols. transcripts under separate cover; 9 vols. depositions (n-2)
(E) 08-06-80	Part of Certified Original Record with 10 envelopes (n-2) (*UNDER SEAL IN VAULT*)
(B) 08-12-80	Clerk's order, sua sponte, that No. 80-1487 and 80-1488 are consolidated
(S) 11-23-81	Certified copy of judgment, copy of opinion and certified bill of costs to the amount of $2040.75 issued to District Court
(V) 02-16-82	Receipt dated 02/16/82 from Clerk, District Court for Certified Original Record (6 vols.); 2 vols. of transcript under separate cover; 1 box of exhibits; 9 vols. depositions—Exception part of certified original record under seal

DATE	FILINGS—PROCEEDINGS
(V) 03-02-82	Receipt dated 03/02/82 from Clerk, District Court for Part of Certified Original Record with 10 envelopes, *UNDER SEAL FROM VAULT*
(V) 03-02-82	Notification from Clerk, Supreme Court that petition for writ of certiorari was filed on 02/10/82 in SC No. 81-1506
(C) 04-07-82	Certified copy of order from Clerk, Supreme Court granting petition for writ of certiorari in SC No. 81-1506 on April 5, 1982

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 77-2175

FEDERAL ELECTION COMMISSION, PLAINTIFF

v.

NATIONAL RIGHT TO WORK COMMITTEE,
EMPLOYEE RIGHTS CAMPAIGN COMMITTEE,
PUBLIC SERVICE RESEARCH COUNCIL and
PUBLIC SERVICE POLITICAL ACTION COMMITTEE,
DEFENDANTS

Civil Action No. 78-0315

NATIONAL RIGHT TO WORK COMMITTEE, ET AL.,
PLAINTIFFS

v.

FEDERAL ELECTION COMMISSION, ET AL., DEFENDANTS

POINTS AND AUTHORITIES IN OPPOSITION TO THE FEDERAL ELECTION COMMISSION'S MOTION TO COMPEL DEFENDANTS NATIONAL RIGHT TO WORK COMMITTEE AND EMPLOYEE RIGHTS CAMPAIGN COMMITTEE TO ANSWER INTERROGATORIES AND PRODUCE DOCUMENTS

On July 28. 1978, the Federal Election Commission ("FEC") served defendants National Right to Work Committee ("NRWC") and Employee Rights Campaign Committee ("ERCC") with a second set of interrogatories and a second request for produc-

tion of documents. On August 28, 1978, defendants NRWC and ERCC filed timely answers to the FEC's second set of interrogatories and second request for production of documents. As will be explained, *infra*, the defendants NRWC and ERCC objected to certain of the interrogatories and request for production of documents upon one or more of the following grounds:

(1) That the material or information sought was wholly irrelevant to the issues presented by the case at bar and would not lead to discovery of admissible evidence;

(2) That the production of such materials or information would be excessively burdensome and expensive;

(3) That some of the materials or information sought are no longer available; and

(4) That the FEC has already been supplied the requested materials or information.

I. *The Objection of NRWC to Interrogatory No. 1 (Second Set) Requesting the Number of Corporations Which Have Given Any Gift, Grant, Dues or Other Form of Donation to NRWC Was Proper In That the Production of Such Information Would Be Unduly Burdensome and Expensive and, In Any Event, Such Information Is Irrelevant to Any Issue in the Present Case and Could Not Be Expected to Lead to Relevant Evidence.*

* * * *

In any event, if NRWC were to produce at considerable expense the requested information, the production of such information would not in the least advance the progress of this controversy toward resolution. NRWC has repeatedly admitted, in response

to interrogatories and questions on deposition, that corporations have contributed funds to NRWC and that corporations have been and are still members of NRWC. But the fact that corporations are members of NRWC and that corporations have contributed funds to NRWC is not at issue in the instant controversy. The FEC continually fails to remember that the sole issue presented in the present controversy is whether *certain private individuals to* whom ERCC in 1976 addressed solicitations were, within the meaning of 2 U.S.C. § 441b, "members" of NRWC. Quite simply, there is nothing in the Federal Election Campaign Act which in any way relates to the receipt by a non-profit corporation of gifts, dues, or other forms of donations from other corporations, whether such corporations are commercial entities or non-profit entities. A careful reading of the Federal Election Campaign Act and the applicable legislative history reveals that Congress was concerned only as to the status of the persons solicited for contributions to political action committees. By providing, in 2 U.S.C. § 441b(b) (2) (C) that the corporation could utilize its funds to establish, administer, and pay for the cost of solicitations for a "separate segregated fund to be used for political purposes", Congress clearly and unmistakably intended that corporate revenues could legally be expended for the purpose of financing the operations of a "separate segregated fund" or, as it is commonly called, a political action committee.*

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* Of course, direct corporate expenditures for political purposes relating to federal elections are illegal. Thus, a corporation cannot give money to a PAC for the PAC to use for political purposes but a corporation is permitted to establish and maintain a separate political committee. 2 U.S.C. § 441b.

NRWC, in accord with the intent of Congress, is fully entitled to receive corporate funds which may legally be utilized for the purpose of financing the operating costs, including the cost of solicitations, of a separate segregated fund. Since this is clearly in accord with the intent of Congress—and not even the FEC disputes this—it remains to be seen how disclosure of corporate contributions and donations to NRWC for the calendar years named by the FEC would in any way whatsoever advance the progress of the instant litigation. Assuming, for example, that NRWC were to undertake an extensive, burdensome, and expensive effort to obtain from the computer memory discs the information sought by Interrogatory No. 1 (Second Set), to what avail would disclossure of such information be? If the FEC, for example, were to learn that a total of $161,000 in 1973 had been contributed to NRWC, what purpose would such information serve? With respect to the complaint which FEC has filed in Civil Action 77-2175, such information is wholly and completely irrelevant. The same conclusion follows with respect to the complaint by NRWC and ERCC in Civil Action No. 78-0315.

The only rationale which the FEC can present as a basis for an order compelling discovery of this information is the following: "The Commission submits that the corporate funding of, and involvement in, NRWC is highly relevant. If NRWC receives funding from corporations and corporations make up its 'membership' then it can be reasonably argued that NRWC is not the 'non-profit, non-commercial' corporation it claims to be." [Memorandum in Support of FEC's Motion to Compel at 4.] But this statement is based upon falacious reasoning and

peculiar logic. When the implications of this rationale are unraveled, the statement seems to stand for the proposition that if a non-profit corporation receives substantial funding from commercial corporations, then the non-profit corporation is not in fact the "'non-profit, non-commercial' corporation it claims to be." The peculiarity of this reasoning can be noted by considering such corporations as the Ford Foundation, the Carnegie Foundation, various non-profit corporations devoted to the advancement of minority workers, and numerous civil welfare corporations, such as the United Way. From the very inception of federal law dealing with non-profit corporations, it has been recognized that the tax exempt status of a non-profit corporation is in no way impaired or jeopardized by contributions from commercial sources. Indeed, it is the very purpose of Congress to encourage commercial entities to contribute a portion of their wealth to nonprofit concerns.

* * * *

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 77-2175

FEDERAL ELECTION COMMISSION, PLAINTIFF

v.

NATIONAL RIGHT TO WORK COMMITTEE, ET AL.,
DEFENDANTS

Civil Action No. 78-0315

NATIONAL RIGHT TO WORK COMMITTEE, ET AL.,
PLAINTIFFS

v.

FEDERAL ELECTION COMMISSION, ET AL., DEFENDANTS

REPLY OF THE FEDERAL ELECTION COMMISSION TO THE NATIONAL RIGHT TO WORK COMMITTEE'S AND EMPLOYEE RIGHTS CAMPAIGN COMMITTEE'S OPPOSITION TO THE FEDERAL COMMISSION'S MOTION TO COMPEL

INTRODUCTION

On November 1, 1978, the Federal Election Commission ("Commission") was served by hand with the opposition of the National Right to Work Committee ("NRWC") and the Employee Rights Campaign Committee ("ERCC") to the Commission's motion to compel NRWC and ERCC to answer interrogatories and produce documents. In the points and

authorities in support of its motion to compel, the Commission set forth the reasons it believes that the requested discovery is relevant to the present litigation. However, in their opposition to the Commission's motion, NRWC and ERCC have put forth several arguments which the Commission feels must be briefly addressed. As NRWC and ERCC believe that the Commission has misconstrued the issues in this litigation, it is hoped that this reply, taken together with NRWC and ERCC's opposition, will finally lead to a clear understanding and agreement regarding exactly what the issue is in the consolidated cases.

1. NRWC'S AND ERCC'S ACKNOWLEDGEMENT THAT THE ONLY ISSUE IN THE CONSOLIDATED CASES IS WHETHER THEY SOLICITED POLITICAL CONTRIBUTIONS FROM OTHER THAN THOSE THEY WERE STATUTORILY ENTITLED TO SOLICIT ALLOWS THE COMMISSION TO FOREGO SOME OF THE REQUESTED DISCOVERY.

Interrogatories one, two and three (second set) propounded by the Commission deal with the nature and extent of corporate involvement in NRWC. The need for, and relevancy of, this information was based on the Commission's initial perception that NRWC and ERCC were claiming that the restrictions on whom a corporation's separate segregated fund could solicit for political contributions found in the Federal Election Campaign Act of 1971, as amended (the "Act") were not intended to apply, and could not constitutionally be applied to a non-profit, non-commercial corporation. In order effectively to answer this argument, it is necessary to show that the "non-profit" nature of a corporation has no bearing on the reasons that a corporation's

participation in the electoral process is limited. In this regard, it would be relevant that NRWC—which claims to be "non-profit"—can be and is financed by profit making corporations.

However, NRWC and ERCC have stated several times in their most recent paper that "the *sole issue raised in these controversies* is whether individuals to whom solicitations were sent during 1976 by ERCC were "members" within the meaning of 2 U.S.C. § 441b(b)(4)(C)." Points and Authorities in Opposition to the Federal Election Commission's Motion to Compel at 14 (hereinafter "Defendants' P & A") (Emphasis added); *See also* Defendants' P & A at 4 & 9. In addition, defendants' argument regarding the lack of any prohibition in the Act against a non-profit corporation receiving monies from commercial corporations also clearly demonstrates the defendants' concession that the Act's solicitation provisions do apply to NRWC and ERCC. Therefore, as the defendants acknowledge that the Act's solicitation prohibitions apply to them, NRWC and ERCC are correct in asserting that the only issue in this litigation is whether NRWC and/or ERCC solicited political contributions from persons other than those it was statutorily entitled to solicit. In so far as the defendants have conceded that the Act's solicitation prohibitions do apply to NRWC and ERCC, the Commission no longer has the pressing need for answers to interrogatories one, two and three.* * * * *

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* In light of NRWC's and ERCC's concession that the only valid issue raised in these controversies is whether they solicited political contributions from nonmembers, the Commission would have no objection to NRWC and ERCC properly amending their answer and complaint to reflect the narrowness of the issue in these cases.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 77-2175

FEDERAL ELECTION COMMISSION, PLAINTIFF

v.

NATIONAL RIGHT TO WORK COMMITTEE, ET AL., DEFENDANTS

Civil Action No. 78-0315

NATIONAL RIGHT TO WORK COMMITTEE, ET AL., PLAINTIFFS

v.

FEDERAL ELECTION COMMISSION, ET AL., DEFENDANTS

Filed Dec. —, 1978

ORDER

Plaintiff Federal Election Commission (FEC) has moved to compel defendants National Right to Work Committee (NRWC) and Employee Rights Campaign Committee (ERCC) to respond to the FEC's second discovery request, dated July 28, 1978. The defendants label the discovery irrelevant and burdensome. Upon consideration of the parties' memoranda and the record, the Court grants the motion in part and denies it in part, as outlined below.

In interrogatories one, two and three, the FEC seeks information concerning corporate donations to or membership in NRWC, as relevant to the issue of

whether NRWC is a nonprofit, noncommercial corporation. The FEC's "initial perception" was that defendants were claiming that the Federal Election Campaign Act (Act) restrictions could not apply to such a corporation. However, recent pleadings have clarified that both parties agree, first, that the sole issue raised in this litigation is whether individuals solicited were members of NRWC and, second, that the Act's solicitation provisions do apply to defendants. Consequently, the FEC "no longer has the pressing need for answers" and the Court will deny the motion to compel answers to interrogatories one through three.

In interrogatory four, the FEC requests the number of members NRWC claims to have had as of 20 separate dates. The Court finds that the growth of NRWC as a "membership organization" is definitely relevant to the nature of NRWC as a "membership organization." Defendants' argument that the cost of supplying this information is burdensome is not convincing, as they failed to break down costs claimed.

Interrogatories five and six concern the defendants' use of lists of corporate employees obtained from corporations. While two of defendants' officials have been asked about this matter in deposition, their responses are not definitive. The Court finds these questions relevant to the nature of NRWC as a "membership organization" and not burdensome.

Finally, the FEC requested copies of the complete minutes of the meetings of NRWC's Board of Directors and Executive Committee from January 1, 1973, to the present. After deleting "the names of individual members and . . . extraneous materials . . . unrelated to the question of membership in NRWC and the operation of ERCC," defendants submitted the minutes. The FEC objects that it is impossible to

view this material in perspective, since only scattered paragraphs have been produced. This objection is well-taken and the Court finds, in addition, that the minutes—minus any personal identifiers of individual members—are relevant to the issues of the nature of NRWC as a "membership organization" and NRWC's "good faith" in solicitation.

Based on the foregoing, it is this 5th day of December, 1978,

ORDERED that the motion of the FEC to compel is denied as to interrogatories (second set) one, two and three; and it is

FURTHER ORDERED that the motion is granted as to interrogatories four, five and six, and the request for production of documents (second set); and it is

FURTHER ORDERED that defendants shall comply with this Order by December 29, 1978.

/s/ Barrington D. Parker
BARRINGTON D. PARKER
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 77-2175

FEDERAL ELECTION COMMISSION, PLAINTIFF

v.

NATIONAL RIGHT TO WORK COMMITTEE, ET AL., DEFENDANTS

Civil Action No. 78-0315

NATIONAL RIGHT TO WORK COMMITTEE, ET AL., PLAINTIFFS

v.

FEDERAL ELECTION COMMISSION, ET AL., DEFENDANTS

JOINT STIPULATION OF FACTS

This joint stipulation of facts represents facts as to which the parties have agreed there is no dispute. Each party reserves the right to submit statements of contested facts, together with documents, as each party may deem relevant.

Note: Many of the facts stipulated to herein go to the issue in this case regarding whether NRWC and ERCC solicited political contributions to ERCC from persons who were members of NRWC under 2 U.S.C. § 441b(b)(4)(C). In order to reach a stipulation, the parties agreed to use terms such as "member", "active member" and "supporting member" to denote those persons whom NRWC and ERCC are claiming were members of NRWC and whom the Commission

claims were not members of NRWC under the Federal Election Campaign Act. The use of such terms in this stipulation, therefore, does not carry with it any legal or factual implications regarding the issue of whether NRWC and ERCC solicited political contributions from persons who were members of NRWC within the meaning of 2 U.S.C. § 441b(b)(4)(C).

1. Federal Election Commission ("FEC" or "the Commission") is an agency of the federal government authorized to enforce the provisions of the Federal Election Campaign Act of 1971 ("Campaign Act") and to issue regulations and advisory opinions. 2 U.S.C. §§ 431 *et seq.*

2. The National Right to Work Committee ("NRWC") is a not-for-profit corporation without capital stock under the laws of the Commonwealth of Virginia. NRWC is recognized as exempt from federal income tax as a social welfare organization described in § 501(c)(4) of the Internal Revenue Code.

3. NRWC was first formed in 1955.

4. NRWC was first incorporated in 1960 in the District of Columbia as a not-for-profit corporation. NRWC's District of Columbia Articles of Incorporation (1960) make no mention of members or membership in NRWC. (Articles of Incorporation of NRWC (1960), District of Columbia; Exhibit Binder Tab 1.)

5. NRWC merged with Americans Against Compulsory Unionism ("AACU"), a Virginia Corporation, pursuant to Articles of Merger filed in the District of Columbia on August 29, 1975. The Articles of Merger with AACU state that the surviving corporation will be NRWC. Article 2 of the Articles of Merger states that NRWC shall not have members. (NRWC's and AACU's Articles of Merger, 1975; Exhibit Binder Tab 2.)

6. In 1975, NRWC adopted articles of incorporation for Virginia as a not-for-profit corporation without capital stock. Article 7 of NRWC's Articles of Incorporation states that the corporation shall not have members. Article 8 states: "[N]o part of the net earnings of the corporation shall inure to the benefit of any member, director, or officer of the corporation or of any private individual."

NRWC's purposes, stated in its Virginia Articles of Incorporation (1975), are:

(a) To help make the public aware of the fact that American citizens are being required, against their will, to join and pay dues to labor organizations in order to earn their living;

(b) To help make the public aware of the fundamental rights which are violated by compulsory unionism;

(c) To prepare, assemble, and distribute through all means of communication, information and materials which will contribute to the knowledge and education of the American people on this subject; and

(d) To engage in any lawful act or activity for which corporations may be organized under Virginia law and to operate on a not-for-profit basis within the meaning of § 501(c)(4) of the Internal Revenue Code and the regulations issued thereunder.

(Exhibit Binder Tab 3.)

7. NRWC's Statement of Election to Accept Title 29, Chapter 10, D.C. Code of Non-Profit Corpora-

tions, 1975 states that NRWC has no members. (Exhibit Binder Tab 4.)

8. NRWC established and maintains the Employee Rights Campaign Committee ("ERCC") as its separate segregated fund to receive and make contributions on behalf of federal candidates. ERCC was organized on December 30, 1975 and was registered with the Federal Election Commission ("FEC"). (FEC Registration Form and Statement of Organization For a Political Committee filed by ERCC on 12/30/75, Exhibit Binder Tab 5; Article of Association of ERCC, Exhibit Binder Tab 6.) NRWC pays for the solicitation and administration expenses of ERCC. (Letter of January 6, 1976 from Alan Dye to the Commission requesting an advisory opinion on behalf of ERCC; Exhibit Binder Tab 7).

9. On January 6, 1976, before any solicitations on behalf of ERCC were made, counsel for ERCC sent an advisory opinion request to the FEC which stated as follows:

> "Mr. Thomas B. Curtis
> Chairman
> Federal Election Commission
> 1325 K Street, N.W.
> Washington, D.C. 20463
>
> RE: Employee Rights Campaign Committee
>
> Dear Chairman Curtis:
>
> The above captioned organization, which we represent, is a nationwide political committee formed to solicit political contributions from individuals and to make contributions to and expenditures on behalf of candidates for federal office. ERCC has filed a statement of registra-

tion as required by Title 2 U.S.C. § 433 and will file regular reports on its activities with the proper authorities. ERCC was organized by the National Right to Work Committee and is intended to operate as an unincorporated separate, segregated fund of the type described in 18 U.S.C. § 610.

The National Right to Work Committee (the Corporation) is a social welfare organization exempt from federal income tax under Section 501(c)(4) of the Internal Revenue Code. It was established in 1955 by employees, employers, and members of the general public and was incorporated in 1960. The Corporation's purpose is to oppose the practice of compulsory unionism in the United States.

It is proposed that the National Right to Work Committee, which established the ERCC, should continue to defray its administration and solicitation expenses in accordance with Section 610 of the Federal Election Campaign Act and the Federal Election Commission's Advisory Opinion 75-23. The ERCC will solicit funds from active members and supporting members of the National Right to Work Committee. Supporting members of the Committee are those members who participate in Committee activities but do not provide financial support. Active members are those members who participate in Committee activities and provide financial support. The National Right to Work Committee will pay all such fund-raising expenses.

In the course of soliciting funds for the ERCC, the Trustees of ERCC, who in many cases are also officers or directors of the Corporation, will find it helpful to occasionally solicit funds for

the ERCC using their official stationery as officers or directors of the Corporation. It will, of course, be made clear that such solicitations are on behalf of ERCC and not the Corporation, and all of the disclosures required by the Federal Election Campaign Act will be made. Since § 610 allows the supporting corporation to absorb solicitation expenses, the use of corporate stationery for ERCC solicitations is believed by the Trustees to be proper.

The ERCC will support candidates for election to federal office as well as candidates for election to state offices. Separate bank accounts will be maintained to receive contributions to be used in connection with federal elections and those to be used in state elections. No contributions or expenditures to or on behalf of candidates for federal office will be made out of bank accounts reserved for support of state candidates. Reports will be submitted to the Federal Election Commission only with respect to funds contributed for use in connection with federal elections and as to contributions to or expenditures by the ERCC on behalf of candidates for federal office.

ERCC hereby requests an Advisory Opinion, in accordance with 2 U.S.C. § 437f, as to the propriety under the Federal Election Campaign Act of 1971, as amended, of the organization and operation of ERCC as described above.

Sincerely,

Alan P. Dye"

The FEC first denoted ERCC's advisory opinion request as AOR 1976-6. (See, letter of January 6, 1976 from Alan Dye, counsel to ERCC requesting an advisory opinion on behalf of ERCC; Exhibit Binder Tab 7.)

10. On January 30, 1976, the Supreme Court issued its opinion in *Buckley* v. *Valeo*, 424 U.S. 1 (1976).

11. In a letter dated March 31, 1976 from Bradley Litchfield to Alan Dye, counsel to ERCC, the FEC stated:

> "On January 30, 1976, the Supreme Court rendered its decision in *Buckley* v. *Valeo*, which significantly modified several provisions of the Federal Election Campaign laws enacted in 1974. Among other things the Court held that the Commission, given its legislative character, could not act in the fashion of an executive agency. The Court stayed its judgment for 30 days to allow time for Congressional action reconstituting the Commission as such an executive body. That stay was later extended for an additional 20 days, until March 22, 1976.
>
> Shortly after the decision was rendered, the Commission decided that it would not issue further advisory opinions under 2 U.S.C. § 437f. The Commission did not, at the same time, rescind its authorization for me to issue opinions of counsel although such opinions rendered since *Buckley* have been confined to the determination of issues substantially governed by previous Commission pronouncements in the form of advisory opinions or proposed regulations. However, by Commission action on March 25, further issuance of opinions of counsel has been suspended.

In addition, since the *Buckley* decision came down, bills have been introduced in both Houses of Congress which would not only reconstitute the Commission, but also make numerous substantive amendments to the Act that would be pertinent to many pending opinion requests.

For the foregoing reasons your opinion request cannot be satisfactorily answered at this time. I want to assure you that we wish to provide you with guidance at the earliest possible moment, but in the present circumstances I see no alternative to some further delay. We will be back in contact with you as soon as possible after the described legislative process is concluded, assuming the Commission's statutory powers are restored. Thank you for your continued patience."

(Letter of March 31, 1976 from Bradley Litchfield, Assistant General Counsel for the Commission to Alan Dye, Exhibit Binder Tab 8; Litchfield Deposition p. 35, 37, 70-72).

12. From the date of the decision in *Buckley* v. *Valeo, supra*, until reconstitution of the Commission on May 11, 1976, no advisory opinions were issued by the Commission. Some pending advisory opinion requests were answered with opinions of counsel. From March 25 to May 11, 1976, no opinions of counsel were issued. (Litchfield Deposition, p. 34; Exhibit Binder Tab 8.)

13. On May 7, 1976, NRWC solicited contributions to ERCC from 34,124 members. On June 21, 1976, 35,175 members were solicited for contributions to ERCC (Exhibit Binder Tab 19.)

14. By letter dated June 22, 1976, the FEC notified ERCC that because of *Buckley* v. *Valeo*,

424 U.S. 1 (1976), the Commission was unable to issue advisory opinions until May 21, 1976. The Commission enclosed copies of the proposed FEC regulations, a copy of FEC publication regarding 2 U.S.C. §§ 431-455, as amended May 11, 1976, and a copy of an FEC Office of the General Counsel Staff memorandum. (Exhibit Binder Tab 9.)

The proposed regulations stated as follows with respect to the issue of membership:

> " 'Members' means all persons who are currently satisfying the requirements for membership in a membership organization, trade association, cooperative, or corporation without capital stock and in the case of a labor organization, persons who are currently satisfying the requirements for membership in a local, national, or international labor organization. Members of a local union are considered to be members of any national or international union of which the local union is a part and of any federation with which the local, national, or international union is affiliated. A person is not considered a member under this definition if the only requirement for membership is a contribution to a separate segregated fund." Prop. Reg. § 100.7(b)(iv).

The Commission informed ERCC that it would be closing its file on ERCC's advisory opinion request but that, if ERCC believed that an advisory opinion was still necessary when the Commission had prescribed its regulations after Congressional review, ERCC could resubmit its advisory opinion request, as to the application of the amended statute or a regulation issued thereunder to a specific factual situation regarding ERCC.

15. By letter dated August 31, 1976, ERCC renewed its request for an advisory opinion and stated therein that ERCC intended to carry on its activities as described in its advisory opinion request of January 6, 1976. The letter further stated that, therefore, no changes need be made in the request dated January 6, 1976. (Letter of August 31, 1976 from Alan Dye to the Commission; Exhibit Binder Tab 10.)

16. From September 9 through 15, 1976, NRWC solicited contributions to ERCC from 197,824 NRWC members. (Exhibit Binder Tab 19.)

17. The members solicited for contributions to ERCC on May 7, 1976, on June 22, 1976 and between September 9 through 15, 1976 were not stockholders of NRWC and are not known to be executive and administrative personnel of NRWC or the families of such persons. (Letter of August 31, 1976 from Alan Dye, counsel to ERCC to FEC amending advisory opinion request of January 6, 1976, Exhibit Binder Tab 10; Letter of November 5, 1976 from Henry Walther in response to first set of questions propounded to NRWC and ERCC pursuant to the Commission's investigation of MUR 290; Exhibit Binder Tab 11.)

18. ERCC received $77,616.87 in response to its solicitations in 1976. The amounts received were reported in filings required by the Commission. (Answer to Interrogatory #47 of Interrogatories (First Set) propounded by the Commission to NRWC and ERCC; Answer to Question #8 of Questions (Second Set) propounded by the Commission to its investigation of MUR 290; Exhibit Binder Tab 19.)

19. A draft advisory opinion, dated September 27, 1976, in response to ERCC's request (now denoted

as draft AOR 1976-79) was submitted by the Office of General Counsel to the Commission for review at the meeting of September 30, 1976. (Draft AO 1976-79; Exhibit Binder Tab 12; Litchfield Deposition, pp. 118-121.)

20. Assistant General Counsel Bradley Litchfield of the FEC assumed that ERCC's advisory opinion request was complete. It was the usual practice of the Commission staff to request additional information when it was felt that they did not have enough. There could be other persons in the Commission who in reviewing the advisory opinion request had some questions as to the completeness of the request. Also, there could have been oversights on the part of Assistant General Counsel Bradley Litchfield or his staff in failing to request certain information. (Draft AO 1976-79; Litchfield Deposition pp. 119-121; 186-187.)

21. On or about September 28 or 29, 1976, Commissioner Thomas E. Harris met with Federal Election Commission General Counsel Office attorneys Bradley Litchfield and Nancy Simmons to discuss draft AO 1976-79. (Litchfield Deposition pp. 124-127; Harris Deposition pp. 142-151; Simmons Deposition pp. 59-66).

A. Commissioner Harris testified that he asked Bradley Litchfield and Nancy Simmons to come to his office to discuss the draft advisory opinion because he "had some questions" about it since the request did not say that NRWC was a membership organization (p. 144). Commissioner Harris testified that he does not remember giving Mr. Litchfield or Ms. Simmons any documents at this meeting. He also testified that he doesn't think that he had copies of

NRWCs' articles of incorporation or constitution or by-laws "or ever knew which the formal governing documents were" (p. 147). Commissioner Harris does not recall seeing at this meeting a copy of the portion of the transcript of the deposition of Reed Larson, taken in the case of *UAW* v. *NRWC* (p. 149). Commissioner Harris does not recall ever seeing NRWC's Articles of Incorporation or the 1972 "Return of Organization Exempt from Income Tax, NRWC, Inc." (p. 151). Commissioner Harris testified that he may have given Mr. Litchfield and Ms. Simmons "suggestions" as "one commissioner is not empowered to give them instructions." (p. 151)

B. Bradley Litchfield testified that he and Nancy Simmons had a brief meeting with Commissioner Harris (pp. 124-125). Mr. Litchfield recalls Commissioner Harris expressing some concern over the status of the organization. Mr. Litchfield testified that "I further remember that [Commissioner Harris] gave me some documents pertaining to the National Right to Work Committee" (p. 125). Mr. Litchfield further testified that to the best of his recollection, "they were excerpts or parts or a deposition of Reed Larson in connection with some litigation to which the National Right to Work Committee was a party, and also a copy of a tax return filed by the National Right to Work Committee. Form 990, I believe" (p. 126). Those are the only two documents which Mr. Litchfield testified he remembers being given. Mr. Litchfield stated that he "became aware in other contexts information was on the public record to the

effect that the governing articles of incorporation of the Right to Work Committee or other documents which it had filed in the form of tax returns or in the form of statements that were made by principal officers of the Committee indicated some questions, at least as to whether it was a membership organization and, thus, whether it had members who would be the class of people solicitable under the amended Federal Election Campaign Act." (Litchfield Deposition, p. 124). Mr. Litchfield stated that Commissioner Harris did not indicate where he had obtained the documents. (Litchfield Deposition, p. 126). Mr. Litchfield does not recall that Mr. Harris said anything else about the Committee. Mr. Litchfield does not recall that Commissioner Harris gave him or Ms. Simmons at the meeting, any instructions or suggestions "other than the general tone of the meeting that these documents could be relevant to the nature of the organization and could fill in the picture presented by the request." (pp. 126-127).

C. Ms. Simmons testified that she went to Commissioner Harris' office with Mr. Litchfield and that Mr. Harris raised some questions regarding the draft advisory opinion which dealt with the question of membership (pp. 59-61). Ms. Simmons testified she believed that Commissioner Harris expressed disagreement with the draft (p. 63). Ms. Simmons also testified that her recollection of the conversation was "pretty fuzzy" but that she believes that he made "some statement or some expression to the effect that he was not convinced that the entity had members" (pp. 63-64). Ms. Simmons also testified

that she does not recall specifically that he gave them any information on the organization or any documents though "[h]e might have" (p. 64). Ms. Simmons also testified that the documents may have come from someone working on the compliance matter later (p. 128). Ms. Simmons believed that Commissioner Harris indicated he had personal knowledge of the organization. (Simmons Deposition, p. 64).

D. Meetings between individual Commissioners and office of General Counsel staff customarily took place on draft advisory opinions before the Commission meeting at which the draft was to be considered. (Harris Deposition, p. 151; Litchfield Deposition, pp. 127, 129-130). When asked whether it was common practice for Commissioners to discuss the facts of an advisory opinion privately after a draft had been circulated but before the discussion of the draft at the public meeting, Mr. Litchfield did not know whether he would accept the characterization of such discussions as "common" and described such meetings as ". . . occasional, a frequent kind of exercise activity." Mr. Litchfield could not remember a specific instance in which such a conversation with a Commissioner resulted in the withdrawal of a draft advisory opinion from consideration but he felt certain that there were cases where it had. Mr. Litchfield stated that it was possible that there had been instances where a Commissioner had provided him with documents relevant to a pending advisory opinion request but that he could not recall any instance where this had happened. (pp. 131-132; pp. 127-128.)

22. By a phone call placed on October 4, 1976, Ms. Simmons informed counsel for ERCC that additional information clarifying NRWC's membership status was needed before an advisory opinion could be issued. (Simmons Deposition, pp. 116-118; Litchfield Deposition, pp. 133-135.)

23. On October 7, 1976, Alan Dye, counsel to ERCC, sent a letter to the Federal Election Commission in response to the phone call of October 4, 1976, which stated: "[t]he Committee feels that in light of my discussion with Miss Simmons, the Commission possesses inadequate information upon which to base a reasoned opinion in response to its advisory opinion request." For this reason, ERCC asked the Commission to postpone further action until it could submit additional information. (Letter of October 7, 1976 from Alan Dye to the Commission, Exhibit Binder Tab 13.)

24. By letter dated October 21, 1976, NRWC and ERCC submitted additional information to the Commission. The letter defined active members as "those persons who express their support of the purposes of the organization, demonstrate a willingness to lend assistance in legislative action efforts, make contributions of money to the organization and accept membership in the organization" and supporting members as "those persons who lend assistance in legislative action efforts and receive action bulletins and communications from the organizations." (Letter of October 21, 1976 from Alan Dye to the Commission and attached Exhibits a-e; Exhibit Binder Tab 14.)

25. The Commission received a complaint filed by the National Committee for an Effective Congress ("NCEC") against ERCC alleging violation of 2 U.S.C. § 441b(b)(4). The complaint was stamped

received by the Commission at 12:54 P.M. on October 21, 1976. Included with the complaint were ERCC's FEC registration statement, NRWC's District of Columbia Articles of Incorporation, NRWC's and AACU's Certificate of Merger and Articles of Merger, a copy of a 1972 Form 990, "Return of Organization Exempt from Taxation", filed by NRWC, and a copy of pages of a deposition of Reed Larson taken in connection with the case of *UAW* v. *National Right to Work Legal Defense and Education Foundation*, C.A. No. 839-73 (D.D.C.). This complaint was assigned matter under review ("MUR") number 290. (Complaint filed by NCEC, received by Commission on or about 10/21/76, Exhibit Binder Tab 15; Spiegel Deposition of April 6, 1978, pp. 64, 112-113; Swirsky Deposition, pp. 63-64).

26. On the afternoon of October 21, NCEC's complaint was assigned to Ms. Sherry Swirsky, a legal assistant, by David Spiegel, Deputy Assistant General Counsel at the Office of General Counsel at the Commission. Ms. Swirsky worked on preparing a draft of a report known as a "48 Hour Report" or "General Counsel's Report" on the NCEC complaint until between 1:00 and 3:00 o'clock in the morning of October 22. The draft report consisted of a statement of facts, a memorandum of law, a recommendation to the Commission to find reasonable cause to believe that a violation had occurred and to send to ERCC a letter notifying ERCC of this finding. (Exhibit Binder Tab 16.) The Office of General Counsel was trying to resolve as many matters as it could prior to the election. (Swirsky Deposition, pp. 84-85, 161; Spiegel Deposition of November 17, 1978, pp. 61, 69, 71). Ms. Swirsky completed the report and transmitted it for review on October 22, 1976.

27. When asked if she made an analysis of any state law which might be relevant, Ms. Swirsky stated her belief that state law was never relevant to any of the cases she handled at the FEC. (Swirsky Deposition, p. 32).

28. During the period May 11, 1976 through December 16, 1976, with respect to Matter-Under-Review (MUR) Nos. 141 to 355, the FEC Office of General Counsel took up to 89 days and an average of 13 days to prepare the initial "General Counsel's Report" or "48 Hour Report." In only 2 MUR's, other than MUR 290, of the total of 214, did the FEC complete the initial "General Counsel's Report" or "48 Hour Report" in one day. Four General Counsel's reports were completed in 3 days or less. Of the 7 General Counsel's reports which were completed in 3 days or less, 3 were done at the end of October, 1976. (FEC's Answer to NRWC's and ERCC's Interrogatory #24 (Second Set)).

29. Harold P. Wolff was the employee of the National Committee for an Effective Congress ("NCEC") who signed the complaint against NRWC and ERCC on behalf of NCEC.

30. Susan King was the Executive Assistant to Commissioner Harris from mid-1975 until October 1977. Prior to becoming Commissioner Harris' Executive Assistant, she served as Co-Director of the Center for Public Financing of Elections from 1973 to 1975. (King Deposition, pp. 18-19). Prior to 1973, Ms. King was Washington Office Director of NCEC. (Wolff Deposition, pp. 94-95).

31. David Spiegel, FEC Assistant General Counsel, who supervised Sherry Swirsky, assigned Sherry Swirsky to work on the matter because she was available, "may have been less overworked than other people at that time, and she was a very capable per-

son." He believed Ms. Swirsky was a hard worker. (Spiegel Deposition, pp. 59, 61).

32. By letter of October 27, 1976, the Commission notified ERCC that it had found reason to believe a violation of 2 U.S.C. § 441b(b)(4)(A)(i) had occurred and requested answers to questions and production of documents relating to the claims raised in MUR 290(76). (Certification of Commission's adoption of recommendation of General Counsel to find reason to believe a violation of 2 U.S.C. § 441b had been committed; Exhibit Binder Tab 17; letter of October 27, 1976 from General Counsel of the Commission, John Murphy to Henry Walther, Exhibit Binder Tab 16.)

33. NRWC and ERCC, upon notice of the Commission's finding, immediately ceased all solicitation activity for ERCC. ERCC has not since that date commenced further activities or solicitations.

34. On October 27, 1976, the Commission began its investigation in MUR 290(76).

35. On November 5, 1976, Mr. Henry Walther, Treasurer of ERCC, in response to the FEC's notification of its investigation, submitted to the FEC ERCC's Articles of Association, NRWC's Virginia Articles of Incorporation, and a letter with attached exhibits dated October 21, 1976 from ERCC counsel Alan Dye to the FEC in regard to ERCC's advisory opinion request. (Letter of November 5, 1976, Exhibit Binder Tab 11.)

36. By letter of January 31, 1977, the Commission notified ERCC that it regarded the letter of November 5, 1976 as unresponsive to the FEC's request of October 27, 1976 and requested additional information from ERCC. (Letter of January 31, 1976 from FEC to Henry Walther, Exhibit Binder Tab 18.)

37. ERCC responded to the Commission's request of January 31, 1977 by letter dated February 14, 1977. In this letter Henry Walther, Treasurer of ERCC, stated that he was surprised to find that the FEC regarded the letter of November 5, 1976 as "unresponsive." However, he supplied additional information and exhibits. (Letter of February 14, 1977 from Henry Walther to the Commission, Exhibit Binder Tab 19.)

38. By letter of March 2, 1977, FEC Assistant General Counsel Bradley Litchfield responded to a request by NRWC counsel for information respecting AOR 1976-79. The letter stated as follows:

> "As you are aware, the facts and issues presented in your request are also raised in a compliance proceeding which is subject to 2 U.S.C. § 437g. Accordingly, a response to your advisory opinion request is not appropriate at this time; moreover, it is likely that future disposition of the compliance matter will obviate any need for responding further to your advisory opinion request.
>
> "In view of the circumstances, you may wish to withdraw your request for an advisory opinion. If that is your desire, we would appreciate receiving a letter to that effect so we may close our files on your opinion request. Thank you for your cooperation." (Exhibit Binder Tab 20.)

ERCC by letter dated March 18, 1977, notified the FEC that it would not withdraw its advisory opinion request. (Exhibit Binder Tab 21.) Receipt of this letter and ERCC's intention not to withdraw its advisory opinion request was acknowledged by letter dated May 11, 1977 from the FEC. (Exhibit Binder Tab 22.)

39. On April 21, 1977, by a vote of 6-0, the Commission found reasonable cause to believe that NRWC and ERCC had violated 2 U.S.C. § 441b (b) (4) (A) (i). The FEC by letter dated April 22, 1977, notified NRWC and ERCC of its finding of reasonable cause to believe and informed NRWC and ERCC that the FEC had a duty, pursuant to 2 U.S.C. § 437g(a) (5) (A) to attempt to correct such violation by informal methods of conference, conciliation, and persuasion and to enter into a conciliation agreement with NRWC and ERCC. The letter of April 22, 1977 requested NRWC and ERCC to advise the FEC whether they wished to conciliate. (Certification of Commission's finding; Exhibit Binder Tab 24; Letter of April 22, 1977 from FEC to ERCC, Exhibit Binder Tab 23.)

40. On May 26, 1976, the Commission issued a notice of proposed rulemaking inviting comment on proposed regulations. On August 25, 1976, the Federal Register published what had been transmitted to Congress on August 3, 1976 (41 FR 35932). Congress adjourned before the 30 days review period had concluded. On October 5, 1976, the Commission issued a policy statement indicating that the regulations transmitted on August 3, 1976 and published in the Federal Register would be the view of the Commission as to the meaning of the federal campaign law until further review was had by Congress. (Policy-Statement of the FEC dated October 5, 1976, Exhibit Binder Tab 26.)

41. The regulations were resubmitted to Congress in January, 1977 and became effective April 13, 1977 as published at 11 C.F.R. § 114.1(e). That provision states as follows:

> " 'Members' means all persons who are currently satisfying the requirements for membership in a

membership organization, trade association, cooperative, or corporation without capital stock and in the case of a labor organization, persons who are currently satisfying the requirements for membership in a local, national, or international labor organization. Members of a local union are considered to be members of any national or international union of which the local union is a part and of any federation with which the local, national, or international union is affiliated. A person is not considered a member under this definition if the only requirement for membership is a contribution to a separate segregated fund."

42. On October 5, 1977, by a vote of 5-0, the Commission found probable cause to believe a violation had occurred. (Exhibit Binder Tab 27.) With this finding the FEC authorized the filing of a civil suit against NRWC and ERCC. By letter dated October 11, 1977 the FEC notified ERCC and NRWC of this finding. (Exhibit Binder Tab 28.)

43. On October 20, 1977, NRWC filed suit against FEC in the United States District Court for the Eastern District of Virginia. (CA No. 78-0315).

44. On December 21, 1977, the Commission filed a complaint against NRWC and ERCC in the District Court for the District of Columbia. (CA No. 77-2175).

45. Finding that the compliance proceeding did not obviate the need for answering ERCC's advisory opinion request, the Office of the FEC General Counsel renewed its consideration of ERCC's advisory opinion request. (Advisory Opinion 1976-79.)

46. At a public meeting of the FEC on January 19, 1978, held to discuss a proposed letter to obtain additional information in regard to the advisory opin-

ion request of Public Service Political Action Committee, the following discourse took place:

> "MR. LARRY NOBLE: This is a request of the Public Service Political Action Committee separate segregated fund for an Advisory Opinion. Public Service Political Action Committee's corporate parent, the Public Service Research Council has recently amended its Articles of Incorporation to state that it has members. The Public Service Political Action Committee now wants to know if it can solicit those persons being the members of the Public Service Research Council pursuant to § 441b(b)(4)(C). The Public Service Research Council would pay the costs of the solicitation. We do not believe that we have sufficient facts at this time on which to base an Advisory Opinion; therefore, we are recommending sending a letter which is before the Commission now. The letter poses questions regarding the nature and the structure of the Public Service Research Council as a membership organization. Generally, the questions deal with the following subjects. The classes of membership. The criteria used regarding persons who are substantially involved with the organization which is the definition they give as applying to members. The procedures the Board of Directors adopted for accepting members. The rights bestowed on members. How the Board of Directors adopts the privileges and rights of membership. The members input into corporate decisionmaking processes in the review structure of the organization. And we believe that these will go towards indicia of a membership organization.

"COMMISSIONER SPRINGER: Madam Chairman may I ask a question?

"CHAIRMAN AIKENS: Mr. Springer.

"COMMISSIONER SPRINGER: What is it, do we have a cut and dried definition of membership organization?

"MR. LARRY NOBLE: Not at this point we don't. We know—

"COMMISSIONER SPRINGER: Do the regulations cover this?

"MR. LARRY NOBLE: It does cover it in the sense that we know what a membership organization is not.

"COMMISSIONER SPRINGER: Is not, but we do not know what one is.

"MR. LARRY NOBLE: That's correct, sir.

"COMMISSIONER SPRINGER: Now, are we able, by this letter to see if we can clarify this point. Bill knows this. Shouldn't we be able to say in the Regulations what a membership organization is?

"GENERAL COUNSEL OLDAKER: The Commission did not. Now I think that the problem is that in any event, we won't have Regulations for at least another, uh, Regulations which have been amended for another four or five months so I think that in the interim this would be the only solution to handle this type of problem."

47. The Office of General Counsel prepared and made public a new draft response to ERCC's advisory opinion request and placed it on the April 13, 1978 agenda for Commission review.

48. ERCC received a copy of this draft advisory opinion (draft AO 1976-79) and by letter dated April 12, 1978, which was hand delivered to each Commissioner personally, ERCC informed the Commission that ERCC believed that the draft AO 1976-79 was inadequate. ERCC in this letter requested the Commission to revise the draft advisory opinion to clarify the standards applied in determining who is a member of a corporation without capital stock or membership organization. (Letter of April 12, 1978, Exhibit Binder Tab 29.)

49. On April 13, 1978, the Commission approved Advisory Opinion 1976-79. ERCC's letters of April 12, 1978 to the Commissioners were discussed at the beginning of the Commission meeting. ERCC's letters of April 12, 1978 were not otherwise specifically responded to by the Commission. (AO 1976-79 dated April 14, 1978 from Thomas E. Harris, Chairman of the Commission to Alan Dye, Exhibit Binder Tab 30; Litchfield Deposition, pp. 172-173; Harris Deposition, p. 139; Partial Transcript of Proceeding, Federal Election Commission Regular Meeting, April 13, 1978, Exhibit Binder Tab 31.)

50. In June, 1978, the Commission issued Advisory Opinion 1977-67 to Public Service Political Action Committee ("PSAC") the separate segregated fund of Public Service Research Council ("PSRC"). In AO 1976-67 the FEC found the existence of certain rights and obligations to be indicative of a membership relationship in the context of a specific factual situation for purposes of the Act. PSRC and PSPAC were originally co-defendants with NRWC and ERCC in the suit filed against NRWC and ERCC by the Commission. (Exhibit Binder Tab 32.)

51. PSRC and PSPAC stipulated to a consent decree with the FEC which was approved by the Court on August 25, 1978.

52. In a letter of October 21, 1976, from Alan Dye, counsel to ERCC, to FEC providing additional information requested by the FEC in its review of ERCC's advisory opinion request, Mr. Dye stated to the FEC that NRWC has accorded membership privileges and rights for many years to two classes of members based upon their substantial involvement with the NRWC activities. Active members are defined as, "those persons who express their support for the purposes of the organization, demonstrate a willingness to lend assistance in legislative action efforts, make contributions of money to the organization and accept membership in the organization." Supporting members of the organization are "those persons who lend assistance in legislative action efforts and receive action bulletins and communications from the organization." (Exhibit Binder Tab 14.)

53. "Demonstrating a willingness to lend assistance in legislative action efforts" is defined to mean any number of acts, the most common of which are: a) responding to a questionnaire that would be included in an NRWC solicitation; and b) taking legislative action (as defined herein) and notifying NRWC of the action taken. (Walther Deposition, pp. 115-116).

"Legislative action" is defined as any action aside from contributing to NRWC, such as writing letters to elected officials, making telephone calls, sending telegrams, or any other such activity in support of the goals of NRWC. (Walther Deposition, pp. 115-116).

54. "To accept membership" in NRWC is to respond to an initial mailing (such as those set forth in Exhibit Binder Tabs 33, 34, 35, 36, and 37) and not reject membership after receiving a membership

card. This process is described in 57 below. (Walther Deposition, pp. 14-16, 98, 130-131; Exhibits 9, 10, 11, 12, 13; NRWC's Response to FEC's Request for Production of Documents dated April 14, 1978; Hare Deposition, pp. 80-81.)

55. On February 14, 1977, NRWC stated that it had a total of 1,190 contributors. (Letter of February 14, 1977 from Henry Walther to the Commission responding to second set of questions directed to NRWC and ERCC pursuant to the Commission's investigation in connection with MUR 290; see, Exhibit Binder Tab 19.) Contributors are defined by NRWC as "those persons who decline to accept active membership but who contribute to NRWC." (Letter of February 14, 1977 from Henry Walther to the Commission responding to the Commission's investigation in connection with MUR 290; Exhibit Binder Tab 19. See also, Walther Deposition, p. 98).

56. NRWC requests its members to participate in its legislative activities by communicating with elected state and federal officials concerning proposed or pending legislation. NRWC "does not record every report of legislative action by its hundreds of thousands of active members." (NRWC's response to Interrogatory #35 (Third Set) and Interrogatory #36 (Third Set)).

57. NRWC obtains members in the following manner:

a. NRWC buys and rents mailing lists, relies upon publicity and advertisements, and requests members to recruit new members (Walther Deposition, pp. 31-32, 77, 109). NRWC advertisements generally discuss the abuses of compulsory unionism. Typically, at the bottom corner is a blank to be filled in with a name and

address. Above the blank the advertisement states: "Yes, I want to help you tell the NRWC story. Enclosed is my maximum contribution of $————." (Exhibit Binder Tab 38.)

b. NRWC sends letters. These letters are sometimes not on NRWC letterhead stationery but may be letters from Congressmen or Senators. These letters deal with issues regarded by NRWC as relevant to the abuses of compulsory unionism. These letters identify NRWC as an organization which seeks contributions to be expended by NRWC for the purpose of opposing specific legislation or compiling, publishing and distributing the results of an NRWC survey. Enclosed with the letters are questionnaires which are intended to be completed and returned to NRWC (Exhibit Binder Tabs 33, 34, 35, 36, 37; Larson Deposition, pp. 112-113; Walther Deposition, pp. 93, 102-103, 108).

c. The letters request that the recipient take action, such as writing to elected representatives, completing the enclosed questionnaire referred to above to be used in the aforesaid NRWC surveys, or signing and sending enclosed prepared postcards to elected representatives expressing the recipient's view with respect to a particular legislative issue. (Exhibit Binder Tabs 33, 34, 35, 36, 37; NRWC's Production of Documents in Response to FEC's Request dated April 14, 1978).

d. Between late December, 1977 and mid-January 1978, eight million copies of a letter dealing with the 1977 Labor Law Reform Bill were sent. A total of between 8 and 11 million persons

were sent this letter. (Walther Deposition, pp. 108-109; Exhibit Binder Tab 37.)

e. One letter sent by NRWC in the record (Exhibit Binder Tab 34), which was sent after January, 1977, included a two page enclosure entitled, "The National Right to Work Committee (Questions and Answers)" in response to the question "Who are members of the National Right to Work Committee?" the enclosure states, "The members of the Committee are men and women—in all walks of life, union members as well as non-union employees from every corner of America—who, through their voluntary contributions, support the work of the Committee."

In response to the question, "How many members does the Right to Work Committee have?", the enclosure states, "The National Right to Work Committee is the largest single-purpose interest group in America. The Committee boasts over 700,000 supporters nationwide, almost half of whom have made contributions in the last twelve months. Studies have shown, moreover, that over two-thirds of the American people sympathize with the objectives of the Committee."

In response to the question, "How much does it cost to join the Right to Work Committee?" the enclosure states, "The members of the Right to Work Committee contribute whatever they can afford. Some people contribute hundreds of dollars each year. The average new member contributes just over twelve dollars."

In response to the question, "As a Tax Paying citizen, don't I pay enough for this sort of

thing already?" the enclosure states, "The National Right to Work Committee receives no tax money. The Committee is a private organization financed entirely by the voluntary generosity of its contributors." (Exhibit Tab 34.)

f. The letters and the enclosures do not describe the various classes of NRWC membership. (Exhibit Binder Tabs 33, 34, 35, 36, 37.)

g. The letters and the enclosures do not inform the recipient if he may alter his membership status and if so how. (Exhibit Binder Tabs 33, 34, 35, 36, 37.)

h. The letters and enclosures do not inform the recipient what he or she must do in order to accept or decline membership in NRWC. (Exhibit Binder Tabs 33, 34, 35, 36, 37.)

i. The letters and enclosures do not state that response to and return of the questionnaire to NRWC will make the person a "supporting member" of NRWC if after receipt of a membership card he does not notify NRWC that he does not want to be a member. (Walther Deposition, pp. 76-78, 82-83; Exhibit Binder Tabs 33, 34, 35, 36, 37.)

j. The letters and enclosures do not state that response to and return of the questionnaire to NRWC, plus return of the requested contribution, will make a person an "active member" of NRWC if after receipt of a membership card he does not notify NRWC that he does not want to be a member. (Walther Deposition, pp. 76-78, 81-83; Exhibit Binder Tabs 33, 34, 35, 36, 37.)

k. If a person responds to and returns to NRWC the enclosed questionnaire filled out in accordance with NRWC criteria established by the President of NRWC, NRWC then sends an acknowledgement to the person and a membership card. If within three and a half weeks the person has not notified NRWC that he does not want to be a member, NRWC adds the name of the person to its membership list. (Walther Deposition, pp. 14, 76-77, 80, 107-108).

1. Standards regarding responses required by NRWC for membership are established by the President of NRWC. These standards are known by the Membership Director of NRWC. In cases where the answers required to establish membership are not totally clear, with respect to a particular questionnaire the President of NRWC communicates the required standards or criteria to the head of the membership division of NRWC. These standards are seldom, if ever, communicated in written form.

m. Answers given in response to these questionnaires are a factor in establishing membership in NRWC. (Larson Deposition, p. 107; Walther Deposition, pp. 81-82; Hare Deposition, pp. 55-56.)

n. Criteria or standards regarding what responses are required for establishing membership vary from questionnaire to questionnaire, which also vary.

o. Persons to whom these initial letters and questionnaires are sent are not told by NRWC in either the letter or the questionnaire or at any

other time that the responses they give will be determinative of their membership status. (Exhibit Binder Tabs 33, 34, 35, 36, 37.)

p. If a person responds to and returns to NRWC the enclosed questionnaire and a contribution, NRWC then sends an acknowledgement to that person along with an "active" membership card. (Walther Deposition, pp. 76-78, 111-112).

q. Whether or not a person is made an active member of NRWC as opposed to a supporting member of NRWC is solely dependent on whether the person sends a contribution to NRWC. (Walther Deposition, pp. 83, 155).

r. If the person does not inform NRWC that he or she does not want to be a "member" of NRWC by returning the membership card or taking some other action notifying NRWC of rejection of membership, the person is considered by NRWC to be a member. (Walther Deposition, pp. 15-16, 98; Hare Deposition, pp. 80-81.)

s. If a person returns a membership card to NRWC he or she is automatically stricken from the membership list of NRWC.

t. Active members who have indicated that they no longer wish to be members of NRWC are sent a letter which states: "If you want we can remove your name from our membership rolls. However, the strength of our organization is concerned citizens like you, and our ultimate success will depend on keeping you informed." Enclosed with the letter is a form with return

envelope which those persons may return to NRWC to indicate whether or not they prefer to remain members of NRWC. If such persons do not respond to the letter they would be stricken from NRWC's membership rolls "within, probably, four weeks." (Exhibit Binder Tab 39.)

u. The members and non-member contributors of NRWC will be solicited for contributions often during the year. (Walther Deposition, pp. 105-108.)

v. NRWC sends its members monthly newsletters, periodic reports, and special action reports, detailing NRWC's current activities and asking the members to take legislative action efforts. These reports describe federal and state legislative developments and the tactics of the proponents of compulsory unionism. (Exhibit Binder Tabs 56, 59.)

w. On the approximate anniversary of his or her membership, each active member is sent a renewal slip and membership card from NRWC. (Exhibit Binder Tab 40; Walther Deposition, pp. 105, 127-131.)

x. If the renewal slip is not returned to NRWC after 30 days, the member is sent another renewal notice. If this renewal slip and a contribution is not returned after another 30 days, another notice of renewal is sent. Thereafter, if no renewal slip or contribution is returned to NRWC, the individual is kept on the active membership list of NRWC and is sent a new membership card as an active member. (Walther Deposition, pp. 125-131.)

y. If after being sent the new membership card, the person does not inform NRWC that he or she does not want to be a member of NRWC by either so stating or returning the membership card to NRWC, NRWC continues to consider the person an active member of NRWC. (Walther Deposition, pp. 127-131.)

z. Persons considered active members by NRWC will be downgraded to supporting member status after two years of not contributing to NRWC. They will no longer receive the NRWC newsletter after a year and a half of not contributing.

58. NRWC does not accord membership privileges to any individual based solely upon his making a contribution to ERCC or any other separate segregated fund.

59. NRWC does not keep separate lists of its corporate and individual members. NRWC can determine that a large portion of its members are individuals. With respect to the remainder, NRWC cannot differentiate between individuals, nonincorporated business members, and incorporated business members. (Larson Deposition, p. 57; Points and Authorities in Opposition to the Commission's Motion to Compel Answers to Interrogatories (Second Set) and Production of Documents (Second Set) p. 3).

60. In a meeting of the Executive Committee of NRWC it was stated that in 1971 NRWC "enrolled 10,600 new committee members." (Minutes of Executive Committee meeting of May 5, 1972); Exhibit Binder Tab 41.)

61. On May 11, 1973, it was stated that NRWC had "21,000 dues paying members—an increase of

6,000 since 1969." (Minutes of Board of Directors meeting of May 11, 1973; Exhibit Binder Tab 42.)

62. It was stated at the May 10, 1974 Board of Directors meeting, that in 1973 "the Committee obtained $1 million from 25,000 contributing members." (Minutes of the Board of Directors Meeting, May 10, 1974; Exhibit Binder Tab 43.)

63. The following are figures which reflect the total number of NRWC members for the period from December 30, 1974 until June 30, 1978. Membership totals for 1975 and the first half of 1976 are listed at bi-monthly intervals until July, 1976. For the period dating from July 30, 1976 until June 30, 1978, the information was compiled in 6 month intervals. (Answer to Second Set of Interrogatories, Interrogatory #4).

Year	Exact Date	Total Number of Members Stated By NRWC		Increase/Decrease From Previous Total		Year End Increase/ Decrease
1974	12/30/74	54,498				
1975	1/30/75	56,575		2,077	)	
	3/30/75	54,557	*	[2,018]	)	
	5/30/75	121,413		66,856	)	514,707
	7/30/75	269,009		147,596	)	
	9/30/75	436,882		167,873	)	
	11/30/75	569,205		132,323	)	
1976	1/30/76	664,015		94,810	)	
	3/30/76	798,651		134,636	)	294,261
	5/30/76	872,642		73,991	)	
	7/30/76	863,466	*	[9,176]	)	
1977	1/30/77	995,207		131,741	)	
	7/30/77	1,156,745		161,538	)	293,279
1978	1/30/78	1,330,914		174,169	)	
	6/30/78	1,676,742		345,828	)	519,997

* Bracketed total shows decrease.

64. The May 9, 1975 report to the Board of Directors stated that "new supporters, about half of whom are contributors (were) currently coming in at a

rate of 15,000 per week." (Report to the Board of Directors of Membership Program, dated May 9, 1975; Exhibit Binder Tab 44.)

65. On February 14, 1977, NRWC stated that it had a total membership of 1,051,271; including 384,930 active members and 611,914 supporting members. (Letter of February 14, 1977 from Henry Walther to the Commission responding to Second Set of questions directed to NRWC and ERCC pursuant to the Commission's investigation in connection with MUR 290; Exhibit Binder Tab 19.)

66. It was estimated by Henry L. Walther, Membership Director of NRWC, that as of July 1978, National Right to Work Committee had a total membership of approximately 1.25 million. Of this number, 550,000-600,000 were stated to be active members and the balance were stated to be supporting members. (Walther Deposition, p. 27.)

67. The following reflects the total amount of money expended by NRWC for the purpose of soliciting persons to become members or to renew membership for 1975, 1976, 1977, and 1978.

DATE	TOTAL OF AMOUNT OF MONEY EXPENDED BY THE NRWC FOR THE PURPOSE OF SOLICITING PERSONS TO BECOME MEMBERS OF NRWC OR TO RENEW MEMBERSHIP FOR EACH OF THE FOLLOWING YEARS
1973	Not available
1974	Not available
1975	$ 504,997
1976	1,091,553
1977	821,158
1978	890,890

(Answer to Commission Third Set of Interrogatories, Interrogatory #41.)

68. Internal Revenue Tax Forms 990 entitled "Return of Organization Exempt for Income Tax"

for the years 1971, 1972, 1973, and 1974 asked that membership organizations enter the amount they allocated for political purposes. In 1971 and 1973 NRWC left blank the space allowed for response to this question. For the years 1972 and 1974, NRWC entered "N/A" in response to this same question. (Exhibit Binder Tabs 45, 46, 47, 48.) In a deposition taken on March 11, 1974, in the case of *United Auto Workers* v. *National Right to Work Legal Defense and Education Foundation*, (D.D.C., No. 839-73), Reed Larson, President of NRWC, was asked the following questions and gave the following response regarding why NRWC did not enter the amount allocated for political purposes in 1970 on IRS Form 990:

"Q. Turning now to Committee Form 990 for 1970, as amended by the IRS directive you gave us, I show you the form as you filed it and ask whether the Committee attached a statement of amounts allocated for political purposes as required by that directive.

(Document handed to witness).

"Q. . . . You are familiar with that document?

"A. Generally, yes.

"Q. In it is the following: 'Mr. Harrison says that the Committee has about 21,000 regularly contributing members plus another 17,000, who are mostly employees (both union and non-union) who at one time or another pledged support to the right to work concept who do not contribute regularly.' Is that your statement?

"A. That is generally correct, yes.

"Q. So the Committee is a membership organization?

"A. That depends on what you mean by a membership organization.

"Q. The Committee has members, is that correct?

"A. The Committee acknowledges contributions as members. The term 'members' has never been really accurately defined and I doubt that it is mentioned in our bylaws. I am not even sure.

"Q. You put out literature, Mr. Larson, that says you have 21,000 regularly contributing members. Do you have 21,000 members or don't you?

"A. We define the people who have pledged their support to the principle and written to the Committee accordingly indicating their support of the Committee and its goal as members also. It is just a matter of definition, what is a member and what isn't. It is not written down anywhere.

"Q. Turning now to Committee Form 990 for 1970, as amended by the IRS directive you gave us, I show you the form as you filed it and ask whether the Committee attached a statement of amounts allocated for political purposes are required by that directive.

(Document handed to witness).

"MR. KILCULLEN: Mr. Rauh, I think the question should be whether they answered ques-

tion 14 yes or no. They would only have to attach a statement if they answered question 14 yes.

"MR. RAUH: He has testified that that statement was true. I am asking whether he has filed a political statement which that form requires.

"MR. KILCULLEN: If he had any political activities. Here is what it says. 'Form 990, part one, line 14, is to be answered only by organizations exempt under Section 501(c)(3). Membership organizations otherwise exempt should attach a statement of amounts allocated for political purposes.'

If there were no political amounts allocated for political purposes, obviously they wouldn't have to.

"THE WITNESS: We didn't file one because it was not applicable or we don't allocate money for political purposes."

BY MR. RAUH:

"Q. You have no money for political purposes?

"A. No.

"Q. You don't consider the Howell activities purposes?

"A. No. Furthermore, I don't think—we have really nailed down the definition of membership organizations. I think probably we would not fall under the IRS definition of membership organizations. That would be my expectation.

"Q. So you didn't file it for two reasons: One you didn't have any political expenditures because the type of expenditures with Howell was not political, and, second, you are not a membership organization. Is that correct?

"A. I would say those are both generally valid, right. "Deposition p. 712-714; attached as Exhibit to complaint denominated MUR 290; Exhibit 14 to Larson (Deposition; Exhibit Binder Tab 49.)

69. NRWC's bylaws make no reference to members or membership in NRWC. (NRWC By-laws, Exhibit Binder Tab 50; Answer to Interrogatory #8 of First Set of Interrogatories propounded to NRWC and ERCC.)

70. Members of NRWC are not required to pay any fixed amount of money initially to be considered as members of NRWC by NRWC. (Answer to Interrogatory #17 (First Set) interrogatories propounded to NRWC and ERCC; Larson Deposition, p. 46). Members of NRWC are not required to pay any fixed amount of money at regular intervals to continue to be considered members of NRWC by NRWC. (Answer to Interrogatory #18 (First Set) interrogatories propounded to NRWC and ERCC; Walther Deposition, pp. 125-131).

71. Members of NRWC have no voting rights with respect to the election of officers or directors of NRWC. (Answer to Interrogatory #19 (First Set) interrogatories propounded to NRWC and ERCC).

72. NRWC reported that in 1976, 77 members of NRWC gave in excess of $50 to ERCC. From these 77 persons, the FEC selected 11 persons to depose. (See NRWC's Answer to Commission's Interrogatories and Production of Documents (First Set)).

NOTE: Paragraphs 73 through 83 deal with the eleven persons deposed by the Commission who were among the seventy-seven persons who gave in excess of $50 to ERCC. As the depositions of these witnesses and the information NRWC and ERCC have provided with regard to them has been placed under court seal, each witness has been assigned a letter for identification purposes. Under separate cover, the parties are providing the court with an index to those depositions and the answer to Interrogatory Number 21 of the Commission's Third Set of Interrogatories.

Page notations included in paragraphs 73 through 83 below denote pages in individual witnesses' depositions.

73. NRWC states that Witness A has been an active member of NRWC since April, 1976 and is still an active member of NRWC. NRWC states that there has never been an alteration in the membership status of Witness A. Witness A was solicited for a contribution to ERCC and Witness A responded to a solicitation for contributions to ERCC conducted from September 8 through 15, 1976.* (Answer to Interrogatory #21 (Third Set) interrogatories propounded to NRWC and ERCC).

73b. Witness A first learned of NRWC through a visit with Reed Larson, President of NRWC, approxi-

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* With regard to this statement as to paragraphs 73 to 83, it should be noted that ERCC recorded the solicitation to which the member responded. ERCC assumes but cannot be absolutely certain that the member received the solicitation, but the fact that the response enabled ERCC to determine the solicitation to which the member responded indicates the member received the solicitation.

mately twenty years ago (p. 9). Witness A considers himself a supporting member of NRWC (pp. 15-16). Witness A stated that ".. . As far as I remember, there was only one thing, National Right to Work, and I thought that my donation would make me a member" (p. 15). Witness A believes that a supporting member is one who sends NRWC money as opposed to an active member who is a person "out soliciting more money from other people maybe." (p. 16). Witness A does not know what one would have to do to alter his or her membership status (p. 17). Witness A believes that to decline membership he would only have to stop sending NRWC money (p. 18). Witness A has "been receiving a lot of pamphlets and things over the years" (p. 11). Witness A stated that NRWC never asked him to take legislative action efforts in support of their cause such as write letters, or send telegrams, or make telephone calls. Witness A has never taken any action on behalf of NRWC besides contributing (p. 15). Witness A stated that he received five or six membership cards from NRWC. Witness A became a member of NRWC "a long time ago" but could not recall when. The first contribution to NRWC of which Witness A has a record was in May, 1976. (pp. 18-19). Witness A believes he may have received questionnaires from NRWC and may have filled them out and returned them to NRWC (pp. 21-22; Exhibit Binder Tab 51.)

73c. Witness A believes that "NRWC attempts to protect people that want to work and not help the people who don't want to work, something like that." (p. 10). Witness A believes he has been requested by NRWC to renew his membership four maybe five times a year and Witness A believes he has renewed

his membership in NRWC (p. 18). Witness A has never returned his membership card to NRWC (p. 19). On cross-examination, Witness A testified to his beliefs as follows:

"Q. Now, is it your understanding that the Right to Work Committee and those other groups we're talking about are interested in preserving the right of employees to work without joining a union? Is that your understanding?

"A. I think that's part of it.

"Q. Do you believe in that?

"A. Yes, sir.

"Q. And have you actively supported that right for employees to work without paying tribute to a union; is that right?

"A. Right, yes.

"Q. So, have you been interested in this type of activity since you first learned of the Right to Work Committee?

"A. Yes, sir.

"Q. And have you always felt that you were a member and a part of these organizations?

"A. Yes.

"Q. And you still feel that no person should be forced to join a union or pay tribute to a union to hold a job?

"A. Right, shouldn't be forced.

"Q. And you've been willing to contribute your funds for that purpose, right?

"A. Yes, sir." (pp. 27-28).

74a. NRWC states that Witness B has been an active member of NRWC since July, 1974 and is still an active member of NRWC. NRWC states that there has never been an alteration in the membership status of Witness B. Witness B was solicited for a contribution to ERCC and Witness B responded to the solicitation for contributions to ERCC conducted from September 9 through 15, 1976. (Answer to Interrogatory #21 (Third Set) interrogatories propounded to NRWC and ERCC).

74b. Witness B considers herself a member of NRWC and believes that she is a member of NRWC by virtue of the fact that she has contributed to NRWC and has written letters (pp. 18-19). Witness B has heard of active and supporting members in some organizations, but does not remember whether this distinction was ever "written out" by NRWC. Witness B received a sustaining membership card but could not describe what a sustaining member was. Witness B did not know what one must do in order to alter membership status in NRWC, but supposes that to alter membership status one would stop making contributions. (p. 20). Witness B believed she had received NRWC's monthly newsletters (p. 16). Witness B believes that NRWC had asked that she take legislative action in support of their cause such as writing letters, or sending telegrams, or making telephone calls. Witness B has written personal letters to Congressmen (p. 18) but does not recall whether she notified NRWC of what action she had taken (p. 27). Witness B has received membership cards from NRWC (p. 21). Witness B has received questionnaires from NRWC but did not recall whether she ever completed any and returned them to NRWC (p. 25; Exhibit Binder Tab 51.)

74c. The first contribution to NRWC with respect to which Witness B has any record is a cancelled check from 1974 (p. 13).

Witness B has never thought of what she would have to do in order to decline membership in NRWC (p. 20).

Witness B is a retired librarian (p. 2). Witness B does not consider herself to be a wealthy person (p. 34). Witness B has contributed a total of $915.00 to NRWC from January 16, 1975 to December 9, 1978. (Exhibit A to Deposition of Witness B). Witness B testified that she had given this support for the following reason:

> "A. Well, I realize that the union method started, there were abuses. The union—not the union—The workers were being abused. They had to join to protect themselves, but it seems to be now that they're grown so powerful, and the leaders were abusing, the rank and file workers were still being abused just as much by one—by the different ones, and I hoped to help strike a balance." (p. 34).

Witness B believed that NRWC was making a contribution toward achieving her stated goal of "striking a balance." She supported NRWC because NRWC effectively represents her views on the issue of striking a balance. Witness B additionally stated that while she may not know all the policies, initiatives, and efforts of NRWC, "I agree with all that I know" (p. 35). Witness B hopes that her participation in American policies through NRWC and other organizations is meaningful to her and important to the public interests. (p. 35).

Witness B regards the NRWC Newsletter as informational and has enjoyed receiving them (p. 36). Witness B believes she has relied upon information sent to her by NRWC as a basis for preparing letters expressing her opinion upon issues of labor law. These letters are sent by Witness B to her Senators and Representatives. Witness B believes that such letters are important in making her opinion known to her representatives. (p. 37).

75a. NRWC states that Witness C has been an active member of NRWC since July, 1965, and is still an active member of NRWC. NRWC states that there has never been an alteration in the membership status of Witness C. Witness C was solicited for a contribution to ERCC and Witness C responded to a solicitation for contributions to ERCC conducted on June 21, 1976. (Answers to Interrogatory #21 (Third Set) interrogatories propounded to NRWC and ERCC).

75b. Witness C considers himself a member of NRWC (p. 15). Witness C is not aware of any distinction between active and supporting membership in NRWC and would think they would be the same. (p. 15). Witness C cannot recall having ever seen anything from NRWC referring to the distinction between active and supporting members. Witness C does not know whether NRWC considers him an active or supporting member or still considers him a member. (p. 16). Witness C assumes that membership is discontinued when one ceases contributing to NRWC (p. 16). Witness C does not know what one must do in order to alter membership status. NRWC never informed him that he could reject membership status by returning his membership card to NRWC, if he wished to reject NRWC membership. Witness

C took legislative action in support of NRWC's cause, by writing letters to his Congressman or Senator twice but he never notified NRWC of his having taken such action (p. 14). Witness C has received membership cards from NRWC (p. 16). Witness C received questionnaires from NRWC but did not remember if he ever filled one of the questionnaires out and returned it to NRWC (p. 19; Exhibit Binder Tab 51.)

75c. Witness C believes that NRWC stands for the right to work without belonging to a union (p. 10). Further Witness C testified that NRWC represented his point of view and that his support of NRWC is important.

Witness C testified to his belief as follows:

"Q. Do you know of any organization in America which, from your perspective, is doing a more important and valuable job in protecting the rights of workers to work without joining unions than the National Right to Work Committee?

"A. No.

"Q. Do you feel strongly that this is an important goal of the American public policy?

"A. It seems to me that the only reason that it was not included in the Bill of Rights is because it was not necessary at the time. Otherwise, it surely would have been present. It certainly seems to me to be equally important to the right to assemble and the right to free speech and the other articles.

"Q. Do you feel that your support and membership in the National Right to Work Committee is a valuable contribution and part of your civic duty, taking into consideration your political principles and ideas?

"A. Yes." (p. 24).

76a. NRWC states that Witness D has been an active member of NRWC since June, 1976 and is still an active member of NRWC. NRWC states that there has never been an alteration in the membership status of Witness D. Witness D was solicited for a contribution to ERCC and Witness D responded to a solicitation for contributions to ERCC conducted from September 9 through 15, 1976. (Answer to Interrogatory #21 (Third Set) interrogatories propounded to NRWC and ERCC).

76b. Witness D considered herself a member of NRWC through 1978. Witness D believes that one just has to contribute financially to NRWC to become a member of NRWC. Having failed to contribute to NRWC in 1979, Witness D believed that as of the date of the deposition she was probably no longer a member of NRWC. (pp. 17-19). Witness D believes that she was a supporting member of NRWC when she was a member, insofar as she had supported NRWC financially and had written letters to Congressmen (p. 19). She was not aware of any distinction between active and supporting members or of what she would have to do to alter her NRWC membership status. Witness D had never been informed by NRWC of the method by which she might alter her membership status (p. 20).

Witness D does not know what one would have to do to decline membership in NRWC (p. 20). NRWC has requested Witness D to take legislative action, such as writing letters, sending telegrams, or making telephone calls, on behalf of their cause a few times. She has written to her Congressman and Senators, although her writing these people has not always been in response to a request by NRWC that such action be taken (p. 16). Witness D thinks she informed NRWC of her having taken such legislative action on one or two occasions but does not think NRWC acknowledged her actions (p. 17). Witness D has received questionnaires from NRWC and has filled them out and returned them to the organization (pp. 23-24; Exhibit Binder Tab 51). Witness D has received membership cards from NRWC in all but this year (pp. 20-21).

76c. Witness D believes that NRWC is an "organization that would like to be sure that people have a right to work without belonging to a union." (p. 11).

Witness D believes that the steps necessary to renew membership in NRWC "would be the same as membership in any organization—paying dues." (p. 34).

Witness D has received from NRWC prepared postcards to sign and to send to United States Senators and Representatives expressing her view with respect to a legislative issue involving compulsory unionism. (p. 27 and Deposition Exhibit 9). Witness D testified that she had signed cards of this type, had sent them to Representatives and Senators, and has usually notified NRWC when this had been done. (pp. 27-28). NRWC generally did not acknowledge this notification.

Witness D agreed that she found NRWC newsletters as being of informational value to her and that she read them regularly. In preparing letters to send to her federal elected representatives, Witness D found the NRWC newsletters to be a "great help." (p. 31). Witness D believes that NRWC expressed her position on the issues it represents. Witness D hopes that her participation in NRWC is important in determining the outcome of political events and she agreed that her participation is a vital aspect of this membership. (pp. 32-34).

77a. NRWC states that Witness E has been an active member of NRWC since December, 1975 and is still an active member of NRWC. NRWC states that there has never been an alteration in the membership status of Witness E. Witness E was solicited for a contribution to ERCC and Witness E responded to a solicitation to ERCC conducted from September 9 through 15, 1976. (Answer to Interrogatory #21 (Third Set) interrogatories propounded to NRWC and ERCC).

77b. To Witness E, being a member of an organization means that he is an active part of the organization. Witness E testified to his beliefs as follows:

> "Q. Do you know if the National Right to Work Committee has any members?
>
> "A. Do I know if they have any members? Well, I don't know quite what you mean by 'members,' but I will put it this way. If you look at my file, you will find I am a sustaining member. So I can only tell you the only way I might answer that question is that according to them, I am a sustaining member, right on that blue card. No. The top one.

"Q. Yes.

"A. How does that read?

"Q. Well, it reads 'Certification of Membership. This will certify that (Witness E) is a Sustaining Member of the National Right to Work Committee.'

"A. Okay. Then the answer to your question is: If that card means anything, then that card speaks for itself. If it doesn't mean anything, then it doesn't speak for itself.

Now, I can ask you: What is a member? Because I really don't know. A member of a golf club is a hell of a lot different than a member of the AAA, and yet, they're both members.

So I suppose membership is the key word, and I don't know what your definition of a membership is. I couldn't tell you what my definition of a membership is because it depends on the organization to which we are talking, and I don't have any idea what the definition of a membership is in the National Right to Work Committee.

"Q. And do you consider yourself a member of the National Right to Work Committee?

"A. I really haven't thought much about it, but I only draw whatever reaction I have from those blue cards.

"Q. If I can refer back to our telephone call of October 17th, you remember I asked you at that time: 'Have you ever been a member of the National Right to Work Com-

mittee?' And I think your response was 'Never.'

"A. It could have been. At the time I didn't know what that was, you know, what they called themselves. I never had anything more to do with the organization than to send the money. So when you said, 'Are you a member of the Committee,' I think of members of a committee like members of a Senate Subcommittee or something of the kind, a working group. Now, I have never been a member of a working group of this organization.

"Q. So you are saying that you base your understanding now if you are a member on the fact they sent you a sustaining membership certificate?

"A. (Witness nods head) But a member to me means that you are an active part of the organization, and I am not an active part of the organization." (Deposition of Witness E, pp. 17-19).

When Witness E first sent a contribution to NRWC, he did not know that by virtue of this contribution NRWC would consider him a member. Witness E believed that NRWC needed the money and would use it wisely. It didn't matter to him whether or not NRWC considered him a member. Following the receipt of his sustaining certificate for 1976-77, Witness E assumed that in order to continue his membership he need only send to NRWC the next year's contribution. (p. 34). He had never been told when he received the sustaining membership certificates or any other material what to do if he did not

want to be a member. Witness E has never been informed what to do if he did not want to become a member. His general reaction after receiving his initial membership certificate was that he wouldn't have sent the money if he hadn't wanted to be a member. (p. 33). Witness E annually sent contributions to NRWC in response to annual requests by NRWC to renew his membership. (pp. 16-17, 22). NRWC may have asked that Witness E take legislative action in support of its cause, such as write letters, and send telegrams, and make telephone calls, but Witness E has never taken such action. Witness E at first didn't believe he had ever received a questionnaire from NRWC asking for his views (p. 17). However, after having been shown several sample NRWC questionnaires, he indicated that although he could not remember any of them specifically, he could have seen them. (p. 25; Exhibit Binder Tab 51.) Witness E does not recall returning to NRWC any questionnaires. (p. 26). Witness E has never received a membership card from NRWC but has received certificates of sustaining membership for the years 1975-76, 1976-77, 1977-78, and 1978-79. (pp. 13, 22, 23, 31).

77c. Witness E believes that what NRWC is attempting to do is very important. (p. 12). Because he has received membership certificates from 1975 on, Witness E knew that NRWC considered him to be a member. (p. 31). At no time after receiving his 1975-76 certificate of sustaining membership did Witness E ever call or write to NRWC objecting to being considered a member. (p. 32). Witness E did not object to being considered a member because "[t]here were no demands on the members other than annual money each year." (p. 32).

78a. NRWC states that Witness F has been an active member of NRWC since July, 1970 and NRWC states there had not been an alteration in the membership status of Witness F throughout the term of his membership in NRWC. Witness F was solicited for a contribution to ERCC and Witness F responded to solicitation for contributions to ERCC conducted on June 21, 1976. According to NRWC's records, Witness F's membership was terminated on February 15, 1979, the date of his deposition. (Answer to Interrogatory #21 (Third Set) interrogatories propounded to NRWC and ERCC).

78b. Witness F believed that he had joined NRWC as a member in the past. When Witness F contributed to NRWC he believed that the contribution would be sufficient to make him a member. Witness F believes that he is no longer a member because he has not renewed his membership in 1978 or 1979 (p. 15; Exhibit Binder Tab 51.) Witness F does not know of any distinction between active and supporting members. (p. 17). Witness F is aware of no special requirements to decline membership but believes that he would decline membership by throwing the membership card in the trash can and by no longer contributing. (p. 19). Witness F received a membership card from NRWC by letter dated January 29, 1979 indicating that he was a supporting member of NRWC, through December 1980, along with a renewal form. Witness F did not return this form with either a contribution or an indication that he did not wish to be a member of NRWC. Witness F considers it an invalid card because he did not return money to NRWC. (p. 18; Exhibit Binder Tab 52). NRWC has requested Witness F to take legislative action in support of pending legislation. Witness F

"wrote letters in response to NRWC's request that he take such action with respect to the Labor Law Reform Bill of 1977." (p. 12). Witness F indicated that he had received and responded to questionnaires sent to him by NRWC, believing that such questionnaires were solicitations of viewpoints to be used in NRWC's lobbying efforts (p. 12; Exhibit Binder Tab 51.)

78c. Witness believes that the National Right to Work Committee is "a group of concerned business people with a conservative political slant such as mine, that are very much against government intervention and very much against the massive, combined, concentrated power and effort of unions to destroy our free enterprise system." (pp. 6-7).

Witness F believes that NRWC represents his point of view and agreed with the principles and the policies set forth in the materials he received from NRWC. Witness F expressed his belief that the Right to Work Committee was "verbalizing and interpreting the way [he] felt politically and economically and socially." Witness F also expressed his belief that: "I felt very much like somebody you vote for. They had a position, and I agreed with that position, and so that is why I gave them my money, and wanted to be a supporting member." (p. 29).

79a. NRWC states that Witness G has been an active member of NRWC since May 1975 and is still an active member of NRWC. NRWC states that there has never been an alteration in the membership status of Witness G. Witness G was solicited for a contribution to ERCC and Witness G responded to a solicitation for contributions to ERCC conducted from September 9 through 15, 1976. (Answer to

Interrogatory #21 (Third Set) interrogatories propounded to NRWC and ERCC).

79b. In response to the question "Do you consider yourself a member of the National Right to Work Committee," Witness G responded, "I don't know. I just contribute. They send these things out, and I think—in other words, I figure like I'm trying to save America, and I expect to do that as long as I live; not only through the National Right to Work Committee or other organizations that I think would be of help." (p. 19). Witness G does not know whether NRWC considers him a member. (p. 19). Witness G does not remember NRWC ever asking him to become a member (p. 20). Witness G does not think that NRWC has ever asked him to take any legislative action in support of their cause, such as write letters, send telegrams, or make telephone calls, and he does not think he has ever taken such action (p. 19). Witness G believes that he has received questionnaires from NRWC and imagines that he has filled one out (pp. 18-19, 21-22; Exhibit Binder Tab 51.) Witness G doesn't know whether he has ever received a membership card from NRWC (p. 20).

79c. Witness G testified as follows:

"Q. When did you first hear about the National Right to Work Committee?

"A. If I remember correctly, it was when I read in the Reader's Digest that the Volkswagen agency at West Palm Beach, they asked—this is the Reader's Digest, now—they asked for the union to build them a building, and it was so high they couldn't afford it. They hired a non-union to build it. I think that article said 1,500 people

> came out of Miami, tore their chainlink fence down, tore the building down and destroyed 28 cars, and nobody had ever been arrested for it. Well, that's not America." (pp. 11-12).

Witness G believes that NRWC protects "people from the harassment of the unions" and "that it's a protection of people as America should be." (pp. 12-13).

Witness G believes NRWC represents his point of view (p. 25).

Witness G fully supports the policy and principles of NRWC in its campaign against excesses of unionism which encroach upon individual rights. (p. 26).

Witness G believes that there is no organization doing a better job than the National Right to Work Committee in combating the excesses of unionism which encroach upon individual rights. Witness G intends to continue to support NRWC in its campaign against abuses perpetrated by unions (pp. 25-27).

80a. NRWC states that Witness H was an active member of NRWC from January 1, 1970 until March 15, 1979. According to NRWC records, Witness H's membership was terminated on March 15, 1979, the date of the deposition. NRWC states that there had been no alteration in the membership status of Witness H throughout the term of her membership. Witness H was solicited for a contribution to ERCC and Witness H responded to a solicitation for contributions to ERCC conducted on May 7, 1976. (Answer to Interrogatory #21 (Third Set) interrogatories propounded to NRWC and ERCC).

80b. Witness H does not know whether she is or ever was personally a member of NRWC unless a single contribution to ERCC would make her a mem-

ber. (pp. 21, 23). Witness H did not personally consider herself a member of NRWC as of the date of her deposition. Witness H could find no evidence of having ever personally contributed to NRWC (pp. 13, 15). Witness H is president of a corporation which she believes is a member of NRWC. Witness H believes that the corporation need do nothing more than pay its dues to be a member of NRWC (p. 21). Witness H believes her corporation to be a supporting member of NRWC insofar as it paid its dues and nothing more, although Witness H is not aware of any classes of membership in NRWC (pp. 21-22). Witness H is not aware of the method by which her corporation could alter its membership status (p. 22). Witness H believes that membership in NRWC could be declined by simply not paying dues. (p. 23). Witness H indicated that, except for the NRWC newsletters, almost every communication from NRWC has asked for a contribution to NRWC (p. 16). Witness H states that her corporation's annual dues are $150.00 per year. Her corporation received annual bills from NRWC for $150.00 in dues (p. 18). Witness H does not recall NRWC ever having asked her personally to take any legislative action on behalf of its cause, such as writing letters, sending telegrams, or making telephone calls, and Witness H doesn't remember ever taking any such action (p. 20). Witness H's corporation has received questionnaires from NRWC but Witness H does not know if she has answered and returned any such questionnaires to NRWC (p. 28, 30; Exhibit Binder Tab 51.) Witness H does not think she personally has ever received a membership card from NRWC. (p. 24). Upon being shown a sample membership card, Witness H stated that she did not think that any membership card had been sent to her corporation. (pp. 24-25, 30-31).

80c. Witness H owns a majority interest of the shares of stock in her corporation and made the decision to cause her corporation to join NRWC (pp. 21-36).

Witness H caused her corporation to join NRWC because she felt through the information she had that it was a good organization, it was doing a good job, and she was in sympathy with it. (p. 36).

Witness H is in sympathy with NRWC because she believes that people should have the right to work and not pay union dues. She believes that her company's membership is in accord with her personal belief because her company does not have a union. (pp. 37-38).

81a. NRWC states that Witness I has been an active member of NRWC since December 1975 and is still an active member of NRWC. NRWC states that there has never been an alteration in the membership status of Witness I. Witness I was solicited for a contribution to ERCC and Witness I responded to a solicitation for contributions to ERCC conducted from September 9 through 15, 1976. (Answer to Interrogatory #21 (Third Set) interrogatories propounded to NRWC and ERCC).

81b. Witness I considers himself a member of NRWC (p. 28) because he believes that he was invited to become a member, paid in excess of the required annual dues, and received a membership certificate.

Witness I believes he has renewed his membership in NRWC by sending contributions in excess of the normal NRWC dues and because NRWC writes to him as a member. (p. 33). Witness I does not know whether NRWC has various classes of membership, but believes on the basis of the "certificate of Sustain-

ing Membership" that he had received from NRWC that he is a sustaining member of NRWC. Witness I considers a sustaining member as one who continues to contribute to NRWC. (p. 31). Witness I indicated that NRWC may have asked him to take legislative action in support of their cause, such as writing letters, sending telegrams, or making telephone calls, but he cannot recall ever having taken any such action on behalf of NRWC. (pp. 27-28). Witness I thinks he has received questionnaires from NRWC and thinks he may have returned one such questionnaire (pp. 27, 37; Exhibit Binder Tab 51.) Witness I may have received a membership card from NRWC but, cannot say how often he has received such cards (p. 33).

81c. Witness I believes the National Right to Work Committee is supporting various employees who have experienced the difficulties that nonunion employees have with the tactics of union employees in trying to force upon them union membership. (p. 19).

Witness I believes that NRWC represents his personal point of view, "that doesn't mean 100% but with regard to those issues with which [he] is familiar. By his contributions to NRWC Witness I expresses his personal point of view on a national level. (pp. 43-45).

82a. NRWC states that Witness J has been an active member of NRWC since August 1971 and is still an active member of NRWC. NRWC states that there has never been an alteration in the membership status of Witness J. Witness J was solicited for a contribution to ERCC and Witness J responded to a solicitation for contributions to ERCC conducted from September 9 through 15, 1976. (Answer to

Interrogatory #21 (Third Set) interrogatories propounded to NRWC and ERCC).

82b. Witness J, when asked if he considered himself a member of NRWC, stated, "I felt when I made a contribution—I'd say I felt I was a member, but that is—specifically I don't know that it really meant anything to me one way or another. I made a contribution." (p. 18). Witness J does not recall having been asked to become a member of NRWC (p. 21), or receiving a membership card from NRWC (p. 21). While Witness J believes that it was possible that NRWC may have asked him to take legislative action in support of their cause, such as writing letters, making telephone calls, or sending telegrams, he never took any such action on behalf of NRWC (pp. 17-18). Witness J believes that it is also quite possible that NRWC might have sent him questionnaires, but he usually throws such things in the wastebasket (p. 17, 23; Exhibit Binder Tab 51.)

82c. Witness J testified as follows:

"Q. Do you know if the National Right to Work Committee has members?

"A. Well now, here I can say that first of all I would like to know what you mean by member.

"Q. I am asking in your understanding of it.

"A. I felt when I made a contribution—I'd say I felt I was a member, but that is—specifically I don't know that it really meant anything to me one way or another. I made a contribution.

"MR. DYE: I don't know that you have —the question of what a member is is the ultimate legal issue in this case. You are asking him, a non-lawyer, to draw the con-

clusion and then testify that that is not a fact.

"Mr. NOBLE: I am not going to submit it as expert testimony on what a member is.

"MR. DYE: Why did you ask?

"MR. NOBLE: I think it is relevant.

"THE WITNESS: May I ask a question? Is it in order?

"MR. NOBLE: Not really.

"THE WITNESS: I would like you to define what a member is. I think it is a proper question.

"MR. NOBLE: I could refer you to the answer given in a copy of an advisory opinion that the Commission gave out to another organization defining what a member is.

"THE WITNESS: Is it available.

"MR. NOBLE: Yes. Other than that, I would think—

"THE WITNESS: Well, I am a member of the National Geographic Society. All I do is send them a contribution. I never attended any meetings. I mean automatically I am a member when I send them a contribution which is in this case a subscription to a magazine, and automatically I am a member. My grandmother gave me a membership when I was eight years old. I didn't know what it meant. I was very proud of it and put it on the wall.

BY MR. NOBLE:

"Q. Just to clarify something here, in our telephone call of October 18, 1978, when I asked you, 'Have you ever been a member of the National Right to Work Committee, I think you said no, and then you said you didn't know what a member is; all you have done is send contributions. Would you still stand by that testimony?

"MR. DYE: That wasn't testimony.

"MR. NOBLE: That statement. Excuse me.

"THE WITNESS: If that is what I said, and you doubtlessly took notes, it must be correct. I wouldn't question your word. I didn't take any notes. My wife said, 'You're a damn fool. You're crazy.' She's been criticizing me ever since. She said I should have said, 'Who are you? How do I know who you are?' Of course, there was no way I could tell. So as far as I am concerned that phone call and any questions you asked were an invasion of privacy, and I should have said so then, and I say it now. I should have said it is none of your blankety-blank business. It shows you how stupid I am.

BY MR. NOBLE:

"Q. Did you discuss this invasion-of-privacy issue with Ms. Hakola?

"A. No. Positively not, but I do feel that way on account of my wife has been after me ever since on that score.

"Q. The problem I have here now is you have just told me you may be a member of the National Right to Work Committee, and previously you had told me no, you didn't know what a member was. Have you decided you know what a member is?

"MR. DYE: There is no reason to badger him with that. I think the first response to your question was, 'Please tell me what a member is,' and he gave you his general impression of the way he felt about the organization after you said you couldn't give him the definition.

"THE WITNESS: In answering I would say I would be happy and proud to be a member now. Why shouldn't I be? The whole thing to me is ridiculous. This is a matter of semantics. Your whole case rests on semantics.

"MR. NOBLE: No. Not on semantics.

"THE WITNESS: Well then, what is this member business?

"MR. NOBLE: If we can get to the questions, it will go a lot faster." (pp. 18-20).

83a. NRWC states that Witness K has been an active member of NRWC since December 1975 and is still an active member of NRWC. NRWC states that there has never been an alteration in the membership status of Witness K. Witness K was solicited for a contribution to ERCC and Witness K responded to a solicitation for contributions to ERCC conducted from September 9 through 15, 1976. (Answer to Interrogatory #21 (Third Set) interrogatories propounded to NRWC and ERCC).

83b. Witness K does not necessarily consider herself to be a member of NRWC (p. 14). If NRWC had ever asked her to be a member of NRWC, Witness K never paid any attention to it. (p. 15). Witness K does not know if NRWC considers her a member. (p. 15). Witness K does not think she has ever received a membership card (p. 15) but if she did, she threw it out (p. 17). Witness K does not believe that NRWC ever asked that she take any legislative action, such as write letters, send telegrams, or make telephone calls, on behalf of an NRWC cause (p. 14). Witness K has not taken any other action on behalf of NRWC except to contribute to NRWC. Witness K believes she might have received a questionnaire from NRWC asking for her views on a particular matter, however, Witness K throws out nearly all such material (p. 13). To the best of her knowledge, Witness K has never responded to or returned any such NRWC questionnaires (p. 14; Exhibit Binder Tab 51.)

83c. Witness K believes that NRWC "tries to protect the working people by allowing them to take jobs they want without being compelled to join a union" (p. 11). Witness K thinks she contributed at least once a year to NRWC (p. 13). Witness K testified that she did not object to being considered a member of NRWC (p. 20).

Respectfully submitted,

FEDERAL ELECTION COMMISSION *ET AL.*

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August 6, 1979

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 77-2175

FEDERAL ELECTION COMMISSION, PLAINTIFF

v.

NATIONAL RIGHT TO WORK COMMITTEE, ET AL.,
DEFENDANTS

Civil Action No. 78-0315
Statement Pursuant to Rule 1-9(h)

NATIONAL RIGHT TO WORK COMMITTEE, ET AL.,
PLAINTIFFS

v.

FEDERAL ELECTION COMMISSION, ET AL., DEFENDANTS

NATIONAL RIGHT TO WORK COMMITTEE AND EMPLOYEE RIGHTS CAMPAIGN COMMITTEE'S STATEMENT OF MATERIAL FACTS WHICH ARE NOT GENUINELY IN ISSUE

Pursuant to Rule 1-9(h) of the Rules of this Court and in support of their Motion for Summary Judgment and accompanying Memorandum of Points and Authorities ("the Motion"), National Right to Work Committee ("NRWC") and Employee Rights Campaign ("ERCC"), submit the following statement of material facts raised by the pleadings in this action as to which they believe there is no genuine issue to be tried.

INTRODUCTION

When negotiating the contents of the parties' joint stipulation of facts, the FEC insisted on using short statements to characterize the documents constituting the administrative record. In addition, although 2 U.S.C. § 437g(a)(5) of the Federal Election Campaign Act expressly mandates that the FEC undertake to conciliate alleged violations of the Act, the FEC refused to include in the parties' joint stipulation of facts any facts pertaining to the conciliation of the parties. Nor would the FEC permit any documents pertaining to the conciliation efforts to be included in the joint exhibit binders.*

In order to have a complete record, NRWC and ERCC hereby submit a compilation of all the facts **

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* One conciliation document the parties intended to remove from the joint exhibit binder, the May 6, 1977, letter from Alan P. Dye to William C. Oldaker (JEB tab 25), was inadvertently retained.

** The facts contained in the parties' joint stipulation of facts were subject to the following condition:

> "Many of the facts stipulated to herein go to the issue in this case regarding whether NRWC and ERCC solicited political contributions to ERCC from persons who were members of NRWC under 2 U.S.C. § 441b(b)(4)(C). In order to reach a stipulation, the parties agreed to use terms such as 'member', 'active member' and 'supporting member' to denote those persons whom NRWC and ERCC are claiming were members of NRWC and whom the Commission claims were not members of NRWC under the Federal Election Campaign Act. The use of such terms in this stipulation, therefore, does not carry with it any legal or factual implications regarding the issue of whether NRWC and ERCC solicited political contributions from persons who were members of NRWC within the meaning of 2 U.S.C. § 441b(b)(4)(C)."

contained in the parties' joint stipulation of facts, plus additional material facts as to which NRWC and ERCC believe there is no genuine issue to be tried. Here NRWC and ERCC have reproduced the text of most of the letters and memoranda appearing in the joint exhibit binders.*** Documents to which the FEC did not stipulate are attached as exhibits to this statement.

* * * *

II. NRWC MEMBERSHIP PROGRAM

[*]—121. Since its founding in 1955, NRWC has always had members. (Larson Deposition, p. 76; Hamilton Deposition, p. 11.) The President of NRWC, in conjunction and in accord with the NRWC Board of Directors, establishes the criteria governing membership in NRWC. (Larson Deposition, pp. 106-107, 80-82.)

—122. Since its incorporation in 1960 and in all succeeding years NRWC has adhered to the same general standards for according membership status to persons. (Larson Deposition, p. 16-17.)

* * * *

*** It would have been too cumbersome to reproduce all of the attachments and enclosures. The appropriate reference to the joint exhibit binders is provided, however, for every fact based on a document contained in those binders, and every document contained therein is referred to at least once.

[*] *Note: All restatements of stipulated facts have been deleted since they appear in the Joint Stipulation of Facts signed by the parties.*

— This symbol will be used throughout this statement of material facts to indicate those facts to which the parties have not stipulated but as to which NRWC and ERCC believe there is no genuine issue to be tried.

[*]+128. xb. The advertisement found at JEB tab 38 is as follows:

Where NOT to Look for Work

THE MACHINIST

Published by International Association of Machinists and Aerospace Workers

[Map Omitted in Printing]

Take a close look at Big Labor's "Map of Misery." Not one city in Utah nor any city in any Right to Work state had "substantial unemployment" as defined by the United States Department of Labor.

That's right. Of the 150 major labor areas in the country, 51 were listed by the Labor Department as having "substantial unemployment" and all were in states where there is no Right to Work.

This situation was brought home vividly to the working man when the map was published in the October 10, 1974 issue of *The Machinist*, the official publication of the International Association of Machinists and Aerospace Workers, AFL-CIO. In an article featuring the above "Map of Misery," readers were urged "not to look for work" in areas with "concentrations of misery." All, of course, were in compulsory union states. Louisiana enacted its Right to Work law in July of this year.

Two years have gone by since the publication of that article but the situation hasn't changed much.

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x This symbol will be used throughout this statement of material facts to indicate that the document referred to or reproduced is contained in the parties' joint exhibit binder, but that the parties did not stipulate to the fact stated herein.

The overwhelming majority of the major labor areas with substantial unemployment are in non-Right to Work States. It still makes sense for the working man to look for jobs where there is a Right to Work because obviously voluntary unionism provides the labor climate conducive to a steady and prosperous economy.

The 7,000 supporters of the National Right to Work Committee from Utah think their Right to Work law, protected by Section 14(b) of the Taft-Hartley Act, is important—to everyone in the state. So, we are bringing you this message to let you know where the candidates and parties stand on Right to Work.

GEORGIA—"As a presidential candidate, Mr. Carter was taken to the top of the mountain by union official George Meany. And there spread out before Mr. Carter were all the riches of the union treasuries. Overcome by ambition and a thirst for power, Mr. Carter knelt down before George Meany. And Mr. Carter was transformed. He now advocates abolition of Right to Work protection and the enactment of common-site picketing legislation."

John Crown, Associate Editor
The Atlanta Journal

NORTH CAROLINA—"He ought to look at the states, most recently Louisiana, that have passed right-to-work legislation. If he can then say, with a straight face, that right-to-work is no big deal, we can assume that the spirit of George Meany is alive and well in Plains, Georgia."

The Greensboro Record

ARIZONA—"The voice of George Meany may beguile Carter, but it's clearly not the voice of the people."

The Arizona Republic

TEXAS—"Maybe Carter has it figured that he has to cotton up to the unions to win in November. Heaven help us if that's the case."

Odessa American

TEXAS—". . . it is saddening to see the national Democratic party clamor for the immediate abolition of all right-to-work laws—and its presidential candidate, Mr. Carter, acknowledge that yes, he'd sign a bill abolishing this fundamental human freedom."

The Dallas News

LOUISIANA—"Anyone who would be 'glad to sign' a bill that would nullify Right to Work laws is a foe of the Right to Work."

The Ruston Leader

GEORGIA—"Georgia and South Carolina have right-to-work laws, and we hope they keep them. But we now know that if Congress votes to rescind them, and Mr. Carter is President, no veto will come from his pen."

The Augusta Herald

MISSISSIPPI—"Jimmy Carter pledged his support for . . . abolition of the Right to Work law, which has brought so much industry to the South."

Tupelo Daily Journal

VIRGINIA—"This freedom of choice for the worker is in accord with the cherished principle of individual liberty. Yet Democratic presidential candidate Jimmy Carter would wipe this freedom from the books by federal fiat."

The Richmond Times-Dispatch

VIRGINIA—". . . the lower South has become a solid Right to Work region of the United States, and this poses quite a challenge to Democrat Jimmy Carter."

Newport News Times-Herald

NATIONAL RIGHT TO WORK COMMITTEE

WASHINGTON HEADQUARTERS:

8316 Arlington Boulevard, Fairfax Virginia 22038

A national coalition of more than 900,000 citizens from all walks of life dedicated to the belief that every American should have the right, but should not be compelled to join or pay money to labor organizations for the Right to Work. The Committee is nonpartisan and does not endorse or support any political candidate or political party.

HELP US TELL THE RIGHT TO WORK STORY THIS YEAR . . . DISPLAY THIS AD IN YOUR OFFICE, STORE—WHEREVER IT CAN BE SEEN

Please return this to:

Mr. Reed Larson, President
National Right to Work Committee
8316 Arlington Blvd.
Fairfax, Virginia 22038

Yes, I want to help you tell the Right to Work story. Enclosed is my maximum contribution.

Name .....

Address .....

City ..... State ..... Zip.....

—c. NRWC contacts some prospective members personally. (Theodore Hamilton Deposition, p. 12, item 1486, infra.)

* * * *

xf. The following are the letters reproduced at JEB tabs 33, 35, and 36:

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
Washington, D.C. 20515

Exhibit 7-13
January 27, 1976

Dear Friend:

What will happen to your state and local taxes . . . your family's safety . . . and our American way of life, if the czars of organized labor have their way in the 94th Congress?

Your opinion is needed at once. That's why I'm enclosing your personal questionnaire and asking you to return it immediately. It's vital that you do so today.

The big union bosses poured more than $25,000,000 into political campaigns last election. As a result, much of the 94th Congress is in hock to them.

George Meany and his henchmen expect to cash in on these debts. They believe Congress will rubber-stamp Big Labor's pet bills regardless of how this affects you, your family, or your friend and neighbors in Carpinteria.

One of their first priorities is repeal of Section 14(b) of the Taft-Hartley Act. They want to make all state Right to Work laws illegal.

But just as important to the power hungry union professionals is proposed legislation to force more than 10,600,000 state and local government employees to join unions.

[unintelligible] may want Congress to pass a law to put your policemen, firemen, and teachers under union control—to force all of your local government employees to join unions or be fired.

If this passes, ruthless union officials will have virtually unlimited power. They'll order your public employees out on strike—and who'll be able to stop them?

They'll just keep your local government shut down until their demands are met. Then America will go the way of those nations whose government employees riot in the streets while disease, fire and crime rage unchecked.

During a firemen's strike in Montreal, paid firefighters slashed hoses private citizens were using to save their homes from going up in flames. Maybe you can't imagine that happening in your town but it could if George Meany and his ilk have their way. These dictators openly call for public employees to violate the law!

Union control of your state and local employees means that an international union boss could stop your police protection and garbage collection . . . shut down your schools . . . cut off your water supply . . . and force you to pay higher taxes which will go for featherbedding and other rip-offs which enrich the union fat cats at your expense.

How can you and I stop this?

Only by acting with many others to convince Congressmen and Senators that voting against Right to Work and for compulsory unionism of state and local employees is political suicide.

That's the purpose of the enclosed questionnaire. It's part of a national survey I am helping the National Right To Work Committee conduct. We'll release the results to newspapers, TV, and radio, and they'll be brought directly to the attention of all of my colleagues here on Capitol Hill.

[unintelligible]

will do my best to be sure this mandate will not be ignored.

Unfortunately, everything, including freedom from union tyranny, has its price. I'm sure you understand that the paper, the postage, the printing that's required for us to reach millions of our fellow Americans will cost tens of thousands of dollars.

So please, when you return your questionnaire, enclose your contribution of $500, $100, $50, $25, or whatever you can. The National Right To Work Committee will use it to help convince Congress that its first duty is to the citizens . . . rather than the overstuffed union hierarchy.

Sincerely,

/s/ Bill Dickinson
WILLIAM L. DICKINSON

P.S. The Thompson Bill, H.R. 77, to turn control of your local government over to the union bosses, has already been heard in the Labor-Management subcommittee. Obviously we need your questionnaire and check immediately. Please, because you value freedom, let us hear from you NOW.

An Editorial
New York Daily News
November 11, 1974

WITHIN 24 HOURS

—after last week's election, big labor moved to cash some political IOUs of congressmen and governors whom it helped elect. The AFL-CIO chartered a new Public Employes Department with a monthly budget allotment of $40,000.

[Pictures Omitted in Printing]

Top priority: a drive in the new Congress to guarantee government workers the same rights to representation elections and collective bargaining as workers in private employment enjoy.

Eventual target: full-speed organizing drives in the public employment field among some 13 million workers at the federal, state and local levels.

The means: strikes against the public, if necessary. This mischievous and irresponsible tactic was bluntly spelled out by George Meany, testy old AFL-CIO boss.

"You just quit working for the guy who's kicking you around," he says. If he happens to be a mayor or governor, "it doesn't make a damned bit of difference." If there happens to be a law forbidding such strikes, as in New York state, that doesn't make a great deal of difference either. Labor be served, public be damned.

Locally, by courtesy of the Gotbaums, the Shankers, the Vizzinis, et al., we've had curtain-raisers on the havoc caused by government walkouts.

Remember June 7, 1971, when the bridge-tenders sabotaged drawbridges and tied up the city for two days?

Despite the chaos, unrepentant Barry Feinstein, Teamster leader of the strikers, threatened repeat action less than a year later unless new contract demands were met.

The 94th Congress must screw up its courage and take a firm stand against such reckless labor adventuring. Government workers are entitled to representation and bargaining. But strikes against the public should be taboo—period. And that goes also for compulsory union membership.

We simply cannot afford these callous, indefensible threats to the health, safety and economy of the nation. Nor should civil service workers be compelled to pay tribute to unions to hold jobs won on merit.

The National Right to Work Committee and the National Right to Work Foundation are separate and distinct organizations. However, their work is complementary. The Committee is conducting a nationwide educational program in support of legislation which would outlaw all forms of forced unionism. The Foundation works solely through the courts to correct injustices suffered by employees as a result of compulsory union arrangements.

An Editorial
The New York Times
November 10, 1974

The Fattest Cat

When it comes to political spending, trade unions have developed into the fattest of fat cats in this post-Watergate period. The upward of $5 million contributed by unions to their 1974 Congressional favorites—90 per cent of them Democrats—is only the visible part of their investment. No less important is the large-scale manpower and other untabulated services they muster in support of union-backed candidates.

Though George Meany loses no opportunity to insist that the point of all this outlay is to advance the general interest, not labor's alone, that is scarcely the message most Democratic Congress-members are likely to derive from the caustic comments on their program and performance made by the AFL-CIO chief in the wake of last week's Democratic landslide. His remarks had all the peremptoriness of a drill sergeant issuing orders to his troops.

They were in line with advice Mr. Meany had given a day earlier at the founding convention of a new AFL-CIO department intended to speed unionization of 13 million Federal, state and municipal workers. His counsel to public workers was to ignore legal prohibitions and go on strike whenever they felt they were being kicked around. As New Yorkers have learned through years of painful experience, what such a policy means is that the public gets kicked around whenever a well-entrenched union in control of an essential public service doesn't get what it wants from the city or state.

Not one word in the Meany speech to the civil service union leaders was devoted to the importance of developing better instruments for resolving disputes without strikes, much less to making bargaining in public agencies a two-way street in which communities get some return in heightened productivity for higher labor costs.

One of the federation's prime goals in the new Congress will be to push through a Federal law requiring states and localities to give public employees all the bargaining rights of workers in private industry, including the right to strike. The accent Mr. Meany chose to put on militant action to bring Governors and Mayors to heel—with or without a law—raises new doubts that the general welfare would benefit from a Federal mandate to strengthen civil service unions.

This pamphlet is an educational service of the

NATIONAL RIGHT TO WORK COMMITTEE

NATIONAL OFFICE

8316 Arlington Blvd., Fairfax, Va. 22030

Single copy free upon request

Quantities $4.00 per 100 copies

January 1975

The Philadelphia Inquirer
Thursday, July 3, 1975

PUBLIC EMPLOYES' UNIONS MUST NOT RULE THE STATE

"Let's go out and close down this God-damned state," shouted Gerald W. McEntee to members of his union of state employees. And out they went.

That battle cry carried a clear symbolic significance, which is the more fundamental question of the walk-out by tens of thousands of Pennsylvania state employes than the ostensible issue of the dispute, which is wages.

The strike's impact was swiftly softened by the constructive and entirely responsible back-to-work order issued by Commonwealth Court for vital security employes. But still, at least 50,000 state employes refused to go to work, following Mr. McEntee's call. It is the first time in the history of the United States that such a strike—statewide and against the state government—has ever been called.

And thus the central question which must stand above all others as Gov. Shapp, Lt. Gov. Kline and others work toward stabilizing Pennsylvania's basic services: Is it healthy—is it tolerable—for a labor union of civil servants to be able to bring government, even partially, to halt in pursuit of its members' financial gains? Or in order to increase union leaders' power?

We reject Mr. McEntee's blasphemy, Pennsylvania, obviously, has not been damned by God. But it may well today be in the process of being damned by Mr. McEntee, by his supporters and by Pennsylvania Act 195, signed into law in July, 1970, by then Gov. Raymond P. Shafer.

Earlier, local strikes of public employes in Pennsylvania, called under the mantle of Act 195, have demonstrated the failings of that law. It is complex,

and it is ostensibly equipped with restraints. They have not worked to protect the public from excessive exercise of power by unionized civil servants. It demands serious reconsideration.

Meanwhile, however, the strike has been called, and the members of Mr. McEntee's American Federation of State, County and Municipal Employes have been at least partially successful in fulfilling his battle cry.

The burden of getting the state fully back in business lies on Gov. Shapp's shoulders, which so far appear commendably firm.

Speaking with Gov. Shapp's backing and after conferring with him Tuesday, Lt. Gov. Kline said: "This is a sad day in the history of labor unions in Pennsylvania. The union leadership is the most irresponsible I have ever seen. People have been threatened and kept away from their jobs."

We agree with that assessment, and believe most fair-minded Pennsylvanians would as well. Clearly, a substantial number of state employes who have gone to work in defiance of Mr. McEntee's arrogance agree too. We trust that, unless Mr. McEntee calls off the strike and returns reasonably to the bargaining table, that number of responsible public employes will increase.

Until the workers return to their jobs and responsible wage negotiations resume, the essential issue remains whether the state of Pennsylvania is run by a labor union or by its elected officials. That question must be resolved. The elected officials must be in charge—and responsible.

Then the time will come to consider the adequacy of Gov. Shapp's offer of 3.5 percent wage raises on top of the 5 percent automatic raises already mandated by law for the majority of the striking employes.

Please return to:

Congressman William L. Dickinson
National Right To Work Committee
1990 M Street, N.W.
Washington, D.C. 20036

SPECIAL QUESTIONNAIRE FOR:

Please answer the questions below and return this form at once in the enclosed envelope. Your name will not be used without your permission in writing.

1. Do you feel there is too much power concentrated in the hands of labor union officials?

   YES —— NO ——

2. Do you feel that anyone should be forced to pay a union boss for permission to earn a living?

   YES —— NO ——

3. Are you in favor of forcing state, county, and municipal employees to pay union dues to hold their government jobs?

   YES —— NO ——

4. Do you want union officials to decide how many state and local employees you the taxpayer must support?

   YES —— NO ——

5. Would you vote for someone who had forced public employees to join a labor union or be fired?

   YES —— NO ——

TO HELP YOU COMPILE AND PUBLICIZE THIS SURVEY AND INCREASE ITS COVERAGE ALL OVER AMERICA, I ENCLOSE MY CONTRIBUTION TO THE National Right To Work Committee of:

$1,000 ——, $500 ——, $100 ——, $50 ——, $25——

Other amount $————

Congressman Dickinson,

You may may not use my name when contacting my Congressman and Sentors with the results of this survey.

66A0 Signed ————————

* * * *

EXHIBIT NO. 11
7-13-78

NATIONAL RIGHT TO WORK COMMITTEE

A Coalition of Employees and Employers

REED LARSON, *President*

November 23, 1977

Dear Friend:

I thought I'd better send you the enclosed newspaper clippings on Big Labor's smashing new victory in Congress . . . in case the Tennessee papers didn't report it.

You see, the Big Labor Bosses did enough lobbying and arm-twisting in the House of Representatives to win their biggest legislative victory ever.

And you and I got clobbered, as the enclosed article explains.

But all is not lost.

The bill that Big Labor won in the House is now before the U.S. Senate.

And you can help beat this Big Labor bill in the Senate by signing and mailing the enclosed postcards to Tennessee Senators Howard Baker, Jr. and James Sasser.

Let me tell you more about Big Labor's huge victory in the House of Representatives.

Then you'll understand why it's so urgent that you sign and mail your postcards to Senator Baker and Senator Sasser.

The bill that the Big Union Bosses forced through the House is H.R. 8410.

The Big Union Bosses and their Congressional allies who passed H.R. 8410 call it labor law "reform."

But what H.R. 8410 really is, is pushbutton unionism. And you and I know that's not labor law reform.

This pushbutton unionism bill, if passed by the Senate, will . . .

> . . . Push hundreds of thousands of workers into Big Unions, even though they don't want to join . . .
>
> . . . Force thousands of employers, big and small, to cave in to Big Labor's demand for compulsory unionism . . .
>
> . . . Allow Jimmy Carter to pack the National Labor Relations Board even more by appointing two new union patsies—two new members who will support the Big Labor Bosses . . .
>
> . . . Give Big Labor the boost it needs for its ultimate goal—abolition of Section 14(b) of the Taft-Hartley Act.

Why is Big Labor pushing so hard for this pushbutton unionism bill?

Well, in the past 3 years, the powerful union bosses have lost over 767,000 dues-paying union members.

American workers are becoming less and less interested in padding the pockets of the Big Union Bosses.

So to make up for that loss, Big Labor is pulling no punches in getting H.R. 8410 passed into law.

Organized labor admits spending $800,000 for paid public relations to get their bill passed in the House.

But that doesn't count literally millions of additional dollars spent for paid staff and the usual union propaganda.

And they'll probably spend even more trying to get the Senate to pass S. 1883.

But the National Right to Work Committee is determined to beat Big Labor's pushbutton unionism bill in the Senate.

For over 22 years, our Committee has been successfully defending the right of workers to individually decide if they want to join unions.

We don't intend to give up now.

But, quite frankly, we can't win this fight without your immediate help.

Here's what I'm asking you to do right away:

1) Sign and mail your postcards to your U.S. Senators. Let them know you're dead set against S. 1883, Big Labor's pushbutton unionism scheme.

2) Send the largest donation you can afford to help the National Right to Work Committee defeat S. 1883.

Just like Big Labor had for its successful House fight, National Right to Work must raise an $800,000 war chest to defeat pushbutton unionism in the Senate.

Yes, $800,000 is a lot of money.

But that's exactly how much National Right to Work needs to beat Big Labor on S. 1883.

Here's our victory plan:

* Full page newspaper ads in Atlanta, Houston, Denver, Chicago, Los Angeles and other major cities to let key Senators know how strongly we oppose S. 1883.

* Massive recruiting mailings like this one to over 2,000,000 Americans, asking them to join National Right to Work and support our fight against compulsory—pushbutton—unionism.

* Educational conferences with newspaper editors across the country—men and women who can directly influence key Senate votes.

I'm asking, pleading with you to send a gift of at least $10 to National Right to Work's drive to defeat pushbutton unionism.

But if at all possible, can you send $25, $50, $100 or perhaps even as much as $1000 for our fight.

Before you decide how much you can send, remember this:

If S. 1883 becomes law, hundreds of thousands of hardworking Americans will be forced into Big Unions, even if they don't want to join.

And the Big Union Bosses will be a giant step closer to abolishing Right to Work.

Please, let me hear from you today with your support of $10, $25, $50 or even $100.

Sincerely,

/s/ Reed Larson
REED LARSON

P.S. Our contacts in the Senate say the vote is going to be so close that a contribution of $10, $25 or $50—plus your postcards or letters to your Senators—could make the difference. Please act now.

TO: Mr. Reed Larson, President
National Right to Work Committee
8316 Arlington Blvd.
Fairfax, Virginia 22038

FROM: Name _____

Address _____

City _____ State _____ Zip _____

Dear Mr. Larson:

☐ YES, I agree that you and I have got to act right now to defeat Senate Bill S. 1883, Big Labor's new drive for forced unionization.

☐ I'm enclosing my maximum gift to help you beat S. 1883 through your nationwide campaign of newspaper ads, massive recruiting mailings and educational conferences with newspaper editors. Enclosed is:

——$1000 ——$500 ——$100 ——$50

——$25 ——$10 ——Other

(Please Make Your Check Payable to: NRTW)

☐ YES, I will mail my postcards to my U.S. Senators.

Dear Senator Sasser:

I'm opposed to any legislation that gives union officials more power to impose compulsory unionism on unwilling workers.

Please cast every vote against S 1883 or any similar bill that promotes compulsory—pushbutton—unionism.

Sincerely,

_____

P.S. Please write and let me know if you agree with me. I will be watching with great interest to see how you vote.

.....

Dear Senator Baker:

I'm opposed to any legislation that gives union officials more power to impose compulsory unionism on unwilling workers.

Please cast every vote against S 1883 or any similar bill that promotes compulsory—pushbutton—unionism.

Sincerely,

_____

P.S. Please write and let me know if you agree with me. I will be watching with great interest to see how you vote.

EXHIBIT No. 12

7-13-78

NATIONAL RIGHT TO WORK COMMITTEE

A Coalition of Employees and Employers

REED LARSON, *President*

November 23, 1977

Dear Friend:

What will happen to your business . . . your job . . . your state and local taxes . . .

What will happen to you . . . your family's safety . . . and our American way of life if the czars of organized labor have their way in the 95th Congress?

We must send the politicians a message.

That's why I'm enclosing your personal questionnaire and asking you to return it immediately. It's vital that you do.

And will you also send the enclosed postcard to your U.S. Senators?

You see, the Big Labor bosses did enough lobbying and arm-twisting to win a huge legislative victory in the House of Representatives this October.

They forced H.R. 8410, their phony labor law "reform" bill, through the House.

H.R. 8410—and its Senate counterpart, S. 1883—is anything *but* reform. It is a shameless attempt by Big Labor to seize more power.

The big union bosses poured more than $35,000,000 into political election campaigns last fall.

But with hundreds of thousands of cards and letters, we've upset their power grabs in the 95th Congress. We've stalled their steamroller—so far.

You and I know, however, that the union bosses aren't about to give up.

They've put their steamroller back on the track. They're determined to cash in on their political debts —*regardless of how this affects you*, your family, or your friends and neighbors.

They want to impose compulsory unionism on more than 12,000,000 state and local government employees. With public employees under union control, ruthless union officials would have almost unlimited power!

The union bosses still want to pass a common situs picketing bill to legalize secondary boycotts in the construction industry.

And they want to destroy all state Right to Work laws by repealing Section 14(b) of the Taft-Hartley Act.

To the union bosses, S. 1883 is the first step. Big Labor is counting on pushing S. 1883 through Congress, to gain the momentum they need to achieve their other legislative goals.

What's so bad about S. 1883? Why is it so urgent that you and I take action?

The Big Unions and their Congressional allies who pushed its companion bill, H.R. 8410, through the House call it "labor reform."

But what this bill really is, is pushbutton unionism. And you and I know that's not "labor reform."

S. 1883 would place new pressures on employers—blackmailing them into signing *compulsory unionism* contracts. Any employer who balked at forcing his employees into a union would risk penalties imposed by government edict.

This pushbutton unionism bill, if passed by the Senate, will . . .

... Push hundreds of thousands of workers into Big Unions, even though they may not want to join unions ...

... Force thousands of employers, big and small, to cave in to Big Labor's demand for compulsory unionism ...

... Allow Jimmy Carter to appoint 2 more union patsies to the National Labor Relations Board —2 new members who will support the Big Labor bosses ...

... Give Big Labor the boost it needs for its ultimate goal—abolition of Section 14(b) of the Taft-Hartley Act.

AFL-CIO president George Meany openly brags that S. 1883 would pave the way for other destructive measures—including the repeal of 14(b) and the wiping out of all state Right to Work laws!

That's why I'm writing to you on behalf of the National Right to Work Committee. Your help is urgently needed.

We must stop Big Labor's pushbutton unionism bill, just as we stopped their earlier power grabs.

We completely smashed their attempts to abolish Arkansas's Right to Work law last fall . . .to legalize common situs picketing in 1975 and 1977 . . . and to gain even more political power through phony "campaign reform" last August.

I'm confident that we can win again—*but only if we have your immediate help.*

Here's our victory plan:

* Run full page newspaper ads in Atlanta, Houston, Denver, Chicago, Los Angeles and other major cities to let key Senators know how strongly we oppose S. 1883.

* Compile the results of our survey form and present them to President Carter and every member of Congress. We hope to cast 500,000 or more votes against S. 1883.

* Send massive recruiting mailings like this one to over 2,000,000 Americans, asking them to join National Right to Work and support our fight against compulsory—pushbutton—unionism.

* Hold educational conferences with newspaper editors across the country—men and women who can influence key Senate votes.

To carry out our plan, we must have the support of citizens like you across the nation.

By joining together, we can make our voices heard and send a message to Congress.

Can I count on you to do these things today?

1) Fill out your special questionnaire and return it to us. We need your vote to add to an overwhelming total.

2) Sign and mail your postcards to your U.S. Senators. Let them know you're dead set against S. 1883, Big Labor's pushbutton unionism scheme.

3) Send the largest donation you can afford to help the National Right to Work Committee defeat S. 1883.

Just like Big Labor had for its successful House fight, the National Right to Work Committee must raise an $800,000 war chest to defeat bushbutton unionism in the Senate.

And unlike Big Labor, our funds come entirely from the *voluntary* contributions of Americans who care about freedom.

Some individuals have sent checks for $100. Others have sent gifts of $50 or $75. Many have sent $10, $15, or $25.

No matter how much you can send, it will be warmly and gratefully received. I assure you that your contribution is critical in the fight to defeat S. 1883.

Before you decide how much you can send, remember this:

> If S. 1883 becomes law, hundreds of thousands of hardworking Americans will be forced into Big Unions against their will.
>
> And the Big Union bosses will be a giant step closer to abolishing Right to Work and gaining virtually unlimited power.

Your help is vital. I'll be anxiously awaiting your reply in the next few days.

Sincerely,

/s/ Reed Larson
REED LARSON

P.S. The vote is going to be so close that a contribution of $10, $25, or $50—plus your postcards or letters to your Senators—could make the difference.

QUESTIONNAIRE ON UNION MONOPOLY POWER

Please return to:

Reed Larson
National Right to Work Committee
8316 Arlington Boulevard
Fairfax, Virginia 22038

SPECIAL QUESTIONNAIRE FOR:

Please answer the questions below and return this form at once in the enclosed envelope. *Your name will not be used without your written permission.*

1. Should common situs picketing be legalized, giving construction union officials the power to shut down an entire building site because of a dispute with a single subcontractor?

   YES —— NO ——

2. Are you in favor of compelling state, county, and municipal employees to pay union dues to keep their government jobs?

   YES —— NO ——

3. Should Big Labor officials be allowed to continue pouring millions of dollars of *compulsory union dues* into the political campaigns of their hand-picked candidates?

   YES —— NO ——

4. Do you believe Congress should force hundreds of thousands of unwilling workers into unions through a so-called labor law "reform" bill that would pressure employers into signing compulsory unionism contracts?

   YES —— NO ——

5. Have you sent your postcards to your Senators?

YES —— NO ——

To help defeat S. 1883, compile and publicize this survey, and increase its coverage all over America, I enclose my contribution to the NATIONAL RIGHT TO WORK COMMITTEE of:

$1,000——, $500——, $100——, $50——, $25——,

Other Amount $——

Mr. Larson: You may may not use my name when contacting my Congressman and Senators with the results of this survey.

SIGNED ——————————

OCALA STAR-BANNER OPINION

[LOGO]

A New York Times Company
819 S.E. First Terrace, Ocala, Fla.

W. PAUL BROOKS, *Publisher*

BERNARD WATTS, *Editor*

DON MEIKLEJOHN, *Managing Editor*

JAMES JOHNSON, *Circulation Manager*

PAUL BAIRSTOW, *Advertising Manager*

Back-Door Approach Should Be Stopped

TWICE THIS year, the 95th Congress fortunately has derailed attempts of organized labor to tighten its grip over industry and the worker.

In refusing to repeal Section 14(b) of the Taft-Hartley Act authorizing state laws banning compulsory unionism, and rejecting labor's push for legalization of common situs picketing, the federal lawmakers were acting in the best interest of a majority of Americans and our free enterprise system.

But now the greedy labor bosses have hit upon a new approach in their determined effort to force workers to join a union.

They already have received House approval of a labor law revision bill, which if ultimately is put into effect, would subject employers who resist compulsory union shop demands to harsh and expensive government-imposed financial penalties.

It is now up to the Senate to make necessary amendments in the package.

THE NATIONAL Right to Work Committee, which led the successful fights against repeal of 14 (b) and the common situs legislation earlier in the year, is striving to alert Americans to labor's new tactics.

And well it should.

It would be a tragic mistake for Congress to be misled into going along with the labor law reform legislation, after already having recognized the propriety of keeping a law on the books that protects state right to work laws.

We do not question the right of anyone to join a labor union, if he or she wants to do so. That is an individual right. It's part of American freedom.

We do speak out strongly, however, against any effort, direct or indirect, that would result in forcing someone to pay union dues in order to obtain or retain a job.

THAT'S WHAT right to work is all about. And it is imperative for Congress to see that nothing is done to infringe upon that right.

As recent as Sept. 8, AFL-CIO President George Meany, admitted publicly that passage of Big Labor's "reform" proposal is expected to pave the way for repeal of Section 14(b).

In other words, H.R. 8410 that won approval of the House by a 247 to 163 vote, and its companion bill in the Senate, S. 1883, take a back-door approach for compulsory union shop.

"They hope to use it as a wedge to open the door to their ultimate goal: the repeal of 14(b) and the subjugation of America's working people to com-

pulsory unionism," is how Reed Larson, president of the Right to Work Committee, put it.

"The new bill is designed to make it so risky for employers to resist compulsory unionism demands—even employers with deep moral objections to compulsory unionism—that few small businessmen can be expected to take the chance. The devastating new penalties which would hang over the small employer's head like the sword of Damocles make his choice very clear: Sign the union contract or face bankruptcy," Larson said.

IT IS of extreme importance for Florida's two members of the Senate to sponsor amendments to the bill which would prevent forced unionization of workers who don't want to join or support unions.

The amendments should prohibit application of any of the bill's penalty provisions in any situation in which compulsory unionism is at issue in union contract negotiations.

We are convinced a vast majority of Floridians oppose any concept that compels workers to pay money to labor organizations as a condition of employment.

We urge our readers who favor the right to work concept and who oppose compulsory unionism to write Sens. Lawton Chiles and Dick Stone and let it be known they oppose the labor law revision bill in its present form.

The address for Sen. Chiles is Room 443, Russell Senate Office Building, Washington, D.C., 20510. Sen. Stone's address is Room 1327, Dirksen Senate Office Building, Washington, D.C. 20510.

The *NATION'S PRESS*

and [LOGO]

LABOR LAW "REFORM"

Syndicated Nationally In More Than 375 Newspapers

The Washington Star *The (Lynchburg) News*

The Philadelphia Bulletin

James J. Kilpatrick:

UNIONS WIN BIGGEST VICTORY IN 42 YEARS

WASHINGTON—A couple of weeks ago, conservatives on Capital Hill were having a merry time. They had just dealt organized labor a series of setbacks on the minimum wage bill in the House, and they were about to break their arms patting one another on the back. They can stop the exercise now. Face it, my brothers: We got clobbered.

There is no way to paper over the defeat suffered by the business community on October 6. By a vote of 257-163, the House approved a "labor reform" package that gives Big Labor its sweetest victory in 42 years. On the following day, the Senate made bad matters worse: The Senate approved a four-step hike in the minimum wage that would produce an hourly minimum of $3.40 by 1981. As Leo Durocher once remarked, in a different context, it was "Poil Harbuh for duh Gi'nts."

Credit ought to be given where credit is due. This was a personal triumph for Alexander Barkan, the

69-year-old chief of the AFL-CIO's Committee on Political Education. He is a Dickensian figure, held in affectionate regard even by his right-wing foes. He turned up at a Capitol Hill reception on the night of the labor reform vote, grinning like a well-fed collie, his homely mug alight with honest jubilation.

A newsman asked him how he brought it off. Well, said Al, it was organization—a lot of organization, plus a little bitty nudge at the end. Three months ago, COPE set up a Labor Reform Task Force in every congressional district where there appeared to be a chance of influencing a vote. An $800,000 fund was raised through special assessments. Union representatives then began to put the pressure on members of the House.

During the August recess, while members were mending fences at home, union spokesmen made it a point to pay a social call. Toward the end of September, when floor action was scheduled, the $800,000 fund was tapped to bring nearly 500 local union lobbyists to Washington. They systematically pounded the corridors of the three House office buildings, pleading a well-informed case for the bill.

Then came the little bitty nudge. Barkan's boys politely laid out the facts of political life to more than a hundred members who had enjoyed Big Labor's support in the 1974 and 1976 elections. "We just asked them to think about how they would like to get along without that support in 1978." No threats, says Al. No reprisals. Nothing ugly. Just think it over.

Members thought it over; and Al romped home with a margin of 80 to 100 votes on every critical amendment. By any objective yardstick, it was a very fine performance.

And it produced a very bad bill. This "labor reform" package is as imbalanced as the original Wagner Act of 1935. The measure is carefully drawn to give organized labor every possible advantage in its drive for new members—a drive of surpassing concern to the AFL-CIO. Over the past two years, the unions have lost 767,000 members; they now represent barely a fifth of the nation's labor force.

If the Senate goes along with the House proposal, Big Labor should be able to recoup—at the cost of some heavy-handed impositions on employers. The bill encourages hurry-up votes on representation elections; the bill would penalize employers who try to resist. To make certain the scales stay tilted, the bill would add two members to the National Labor Relations Board. It is a fair assumption that in any doubtful case, Mr. Carter's appointees would go along with Al.

The Senate will not take up the labor reform package until next year, but its vote of October 7 on the minimum wage bill offers no encouragement to the business community. The Senate rejected an attempt to provide a special sub-minimum wage for teenagers, and it added limitations to the House-passed exemptions for certain small businesses.

Conservative spokesmen will have to fall back and regroup. Businessmen staged their own fine performance some months ago, in defeating the common site picketing bill. Right-to-work forces also have worked effectively to forestall any serious effort for repeal of Section 14(b) of Taft-Hartley. But on the labor reform package, they face uphill struggle. They might consider a task force in every state, an $800,000 special fund, an organized effort, and some well-directed nudges. What business needs most of

all, if an envious word may be forgiven, is its own version of a buy named Al.

(C) 1977 Washington Star Syndicate, Inc.

This story carried in the Washington Star and other papers tells exactly how union bosses beat us in the House!

It's crucial that you and I fight harder than ever to beat this bill now that it's before the U.S. Senate.

P.S. Please write and let me know if you agree with me. I will be watching with great interest to see how you vote.

Dear Senator Helms:

I'm opposed to any legislation that gives union officials more power to impose compulsory unionism on unwilling workers.

Please cast every vote against S. 1883 or any similar bill that promotes compulsory—pushbutton—unionism.

Sincerely,

_____

P.S. Please write and let me know if you agree with me. I will be watching with great interest to see how you vote.

Dear Senator Morgan:

I'm opposed to any legislation that gives union officials more power to impose compulsory unionism on unwilling workers.

Please cast every vote against S. 1883 or any similar bill that promotes compulsory—pushbutton—unionism.

Sincerely,

_____

P.S. Please write and let me know if you agree with me. I will be watching with great interest to see how you vote.

IMPORTANT

1) Please sign and mail the yellow postcards directly to your U.S. Senators.

2) Also ask your friends, neighbors or fellow workers to mail the extra postcards.

3) Return your personal questionnaire to help us make an overwhelming total.

xh. The following is the letter reproduced at JEB tab 37:

NATIONAL RIGHT TO WORK COMMITTEE
A Coalition of Employees and Employers
Headquarters at the Nation's Capital

January 6, 1978

Dear Friend:

What will happen to you . . . your family's safety . . . and our American way of life . . .

What will happen to your business . . . your job . . . your state and local taxes if the czars of organized labor have their way in the 95th Congress?

These are important questions. That's why I'm enclosing your personal questionnaire and asking you to return it immediately. *It's vital that you do.*

And will you also send the enclosed postcards to your U.S. Senators?

You see, the Big Labor bosses did enough lobbying and arm-twisting to win a huge legislative victory in the House of Representatives this October.

They forced H.R. 8410, their phony labor law "reform" bill, through the House.

H.R. 8410—and its Senate counterpart, S. 1883—is anything *but* reform. It is a shameless attempt by Big Labor to seize more power.

The big union bosses poured more than $35,000,000 into political election campaigns in 1976.

But with hundreds of thousands of cards and letters, we've upset their power grabs in the 95th Congress. We've stalled their steamroller—so far.

You and I know, however, that the union bosses aren't about to give up.

They've put their steamroller back on the track. They're determined to cash in on their political

debts—*regardless of how this affects you*, your family, or your friends and neighbors.

They want to impose compulsory unionism on more than 12,000,000 state and local government employees. With public employees under union control, ruthless union officials would have almost unlimited power!

The union bosses still want to pass a common situs picketing bill to legalize secondary boycotts in the construction industry.

And they want to destroy all state Right to Work laws by repealing Section 14(b) of the Taft-Hartley Act.

To the union bosses, S. 1883 is the first step. Big Labor is counting on pushing S. 1883 through Congress, to gain the momentum they need to achieve their other legislative goals.

What's so bad about S. 1883? Why is it so urgent that you and I take action?

The Big Unions and their Congressional allies who pushed its companion bill, H.R. 8410, through the House call it "labor reform."

But what this bill really is, is pushbutton unionism. And you and I know that's not "labor reform."

S. 1883 would place new pressures on employers—blackmailing them into signing *compulsory unionism* contracts. Any employer who balked at forcing his employees into a union would risk penalties imposed by government edict.

This pushbutton unionism bill, if passed by the Senate, will . . .

> . . . Push hundreds of thousands of workers into Big Unions, even though they may not want to join unions . . .

. . . Force thousands of employers, big and small, to cave in to Big Labor's demand for compulsory unionism . . .

. . . Allow Jimmy Carter to appoint 2 more union patsies to the National Labor Relations Board —2 new members who will support the Big Labor bosses . . .

. . . Give Big Labor the boost it needs for its ultimate goal—abolition of Section 14(b) of the Taft-Hartley Act.

AFL-CIO president George Meany openly brags that S. 1883 would pave the way for other destructive measures—including the repeal of 14(b) and the wiping out of all state Right to Work laws!

That's why I'm writing to you on behalf of the National Right to Work Committee. Your help is urgently needed.

We must stop Big Labor's pushbutton unionism bill, just as we stopped their earlier power grabs.

We completely smashed their attempts to abolish Arkansas's Right to Work law last fall . . . to legalize common situs picketing in 1975 and 1977 . . . and to gain even more political power through phony "campaign reform" last August.

I'm confident that we can win again—*but only if we have your immediate help.*

Here's our victory plan:

* Run full page newspaper ads in Atlanta, Houston, Denver, Chicago, Los Angeles and other major cities to let key Senators know how strongly we oppose S. 1883.

* Compile the results of our survey form and present them to President Carter and every member

of Congress. We hope to cast 500,000 or more votes against S. 1883.

* Send massive recruiting mailings like this one to over 2,000,000 Americans, asking them to join National Right to Work and support our fight against compulsory—pushbutton—unionism.

* Hold educational conferences with newspaper editors across the country—men and women who can directly influence key Senate votes.

To carry out our plan, we must have the support of citizens like you across the nation.

By joining together, you and other concerned citizens can make your voices heard and send a message to Congress.

Can I count on you to do these three things today?

1) Fill out your special questionnaire and return it to the National Right to Work Committee. We need your vote to add to an overwhelming total.

2) Sign and mail your postcards to your U.S. Senators. Let them know you're dead set against S. 1883, Big Labor's pushbutton unionism scheme.

3) Send the largest donation you can afford to help the National Right to Work Committee defeat S. 1883.

Just like Big Labor had for its successful House fight, the National Right to Work Committee must raise an $800,000 war chest to defeat pushbutton unionism in the Senate.

And unlike Big Labor, our funds come entirely from the *voluntary* contributions of Americans who care about freedom.

Some individuals have sent checks for $100. Others have sent gifts of $50 or $75. Many have sent $10, $15, or $25.

No matter how much you can send, it will be warmly and gratefully received. I assure you that your contribution is critical in the fight to defeat S. 1883.

Before you decide how much you can send, remember this:

> If S. 1883 becomes law, hundreds of thousands of hardworking Americans will be forced into Big Unions against their will.
>
> And the Big Union bosses will be a giant step closer to abolishing Right to Work and gaining virtually unlimited power.

Your help is vital. I'll be anxiously awaiting your reply in the next few days.

Sincerely,

/s/ Carl T. Curtis
CARL T. CURTIS
United States Senator

P.S. The vote is going to be so close that a contribution of $10, $25, or $50—plus your postcards or letters to your Senators—could make the difference.

P.P.S. Please mail your postcards at once so they'll be on your Senators' desks when they come back in late January.

QUESTIONNAIRE
ON UNION MONOPOLY POWER

Please return to:

Senator Carl T. Curtis
National Right to Work Committee
8316 Arlington Boulevard
Fairfax, Virginia 22038

SPECIAL QUESTIONNAIRE FOR:

Please answer the questions below and return this form at once in the enclosed envelope. *Your name will not be used without your written permission.*

1. Should common-situs picketing be legalized, giving construction union officials the power to shut down an entire building site because of a dispute with a single subcontractor?

YES —— NO ——

2. Are you in favor of compelling state, county, and municipal employees to pay union dues to keep their government jobs?

YES —— NO ——

3. Should Big Labor officials be allowed to continue pouring millions of dollars of *compulsory union dues* into the political campaigns of their hand-picked candidates?

YES —— NO ——

4. Do you believe Congress should force hundreds of thousands of unwilling workers into unions through a so-called labor law "reform" bill that

would pressure employers into signing compulsory unionism contracts?

YES —— NO ——

5. Have you sent your postcards to your Senators?

YES —— NO ——

To help defeat S. 1883, compile and publicize this survey, and increase its coverage all over America, I enclose my contribution to the NATIONAL RIGHT TO WORK COMMITTEE of:

$1,000——, $500——, $100——, $50——, $25——,

Other Amount $——

Senator Curtis: You may—— may not—— use my name when contacting my Congressman and Senators with the results of this survey.

SIGNED————————————

* * * *

xj. The following is the letter reproduced at JEB tab 34:

UNITED STATES SENATE
Washington, D.C.

I'm enclosing your personal questionnaire and asking you to return it immediately. It's vital that you do.

Because the union bosses know what they want in [unintelligible]

They want what they have in New York City—where a mayor and governor grovel before them, eager to do their bidding. And where they cripple an almost bankrupt city with one strike after another.

Union bosses want what they have in San Francisco—where they staged an illegal strike of police and other city workers and SNEERED at clergymen's pleas to do something about the roving gangs of criminals who terrorized the old and helpless. And where a union official later praised the strikers for "the way you kept this city in turmoil until our demands were met."

Union big-shots might even settle for what they have in Baltimore—where they called a strike of police, firemen, prison guards, and garbage collectors all at the same time. And, as one union official shouted that the city would "burn to the ground" if his demands were not met, thousands of young toughs rampaged through Baltimore's business district, smashing windows and looting.

What is it that the union bosses want from you?

They want what they have in so many of our big cities. And what they have pushed and shoved for in places like Big Rapids, Mich. (pop. 8,686) . . .

Hortonville, Wisc. (pop. 1,500) . . . and Albuquerque, N.M.

One wonders how much they care about the effect it has on your taxes . . . your cost of living . . . your family's safety . . . or our American way of life.

They want MONOPOLY, the same kind of monopoly that would get a businessman slapped with an anti-trust charge and tossed into jail.

They want POWER, the same kind of power that George Washington and his band of patriots took up arms against 200 years ago.

Union bosses want the MONOPOLY that's called *exclusive representation*—the POWER to control and collect tribute from all employees of private firms and public agencies, even when 49 out of 100 workers vote against being represented by the union.

All this leads to the MONOPOLY of *compulsory unionism*—the ultimate POWER to force dues and fees from workers who don't want to join the union, and indeed, want nothing from it.

> (This is a power, by the way, that more than two-thirds of the American people don't think union agents should have, according to independent public opinion surveys.)

Union officials also want—and almost got—the MONOPOLY called situs picketing, the POWER to shut down an entire construction site because of a dispute with a single subcontractor. Thus forcing still more Americans to knuckle under to union fat cats in order to earn a living at their trade.

Too many union agents will stop at nothing—beatings, bombings, boycotts—to get their hands on MONOPOLY POWER.

If "the rough stuff" doesn't work for them, they just dip their paws into Big Labor's billion dollar kitty of greenbacks gained from forced dues and special assessments—and they file a trumped-up lawsuit.

Thus 12 giant unions have ganged up to destroy, by court decision, your National Right to Work Committee.

Finally, if all else fails, you can count on the union bosses to try to BUY their way into power.

That's right. BUY. It's frightening but true that the union fat cats poured more than $100,000,000 into political campaigns last fall. As a result, Jimmy Carter and much of the 95th Congress is in hock to them.

Now the union fat cats expect to cash in on these debts. They believe Congress will rubber-stamp Big Labor's pet bills regardless of how this affects you, your family, or your friends and neighbors.

And it's an unfortunate fact that too many politicians care more about the support of the union hierarchy than the effect on you of the rising prices, rampant featherbedding and loss of freedom resulting from the union bosses' pet schemes.

What are we—you and I—going to do about all this? Shall we cave in and surrender our freedom, let the union tyrants have their way?

Or should we fight on?

Patrick Henry said it for me: "Is life so dear, or peace so sweet, as to be purchased at the price of chains and slavery? Forbid it, Almighty God! I know not what course others may take, but as for me, give me liberty, or give me death!"

Because you share my determination to carry on the fight against the chains of compulsory unionism, will you please do two things today?

1) Fill out and return your special questionnaire.

2) Send in your maximum contribution so we can step up our battle against the union czars.

We must convince the politicians that voting against Right to Work and for compulsory unionism is political suicide.

That's the purpose of the enclosed questionnaire. It's part of our national survey. We'll release the results to newspapers, TV, and radio, and I'll make sure they'll be brought directly to the attention of all of my colleagues here on Capitol Hill.

We need your vote to add to an overwhelming total.

And we need your maximum contributions so that we can bring our message to millions of additional Americans.

Some of our friends have sent $500 and others have sent $75 or $150. Many have sent $10, $15, or $5. But no matter how much you can send, it will be warmly and gratefully received.

You can serve a mandate on the Congress; and I will do my best to see that this mandate will not be ignored.

If you will help, I'm sure we can force Congress to recognize that its first duty is to the citizens . . . rather than to the overstuffed union hierarchy.

Sincerely,

/s/ Orrin Hatch
ORRIN HATCH

P.S. This country is dangerously close to having a union dictatorship. So please, when you return your questionnaire, enclose your contribution of $500, $25, $100, or whatever you can.

THE RIGHT TO WORK ISSUE

(Questions and Answers)

1. WHAT IS THE RIGHT TO WORK PRINCIPLE?

The Right to Work principle—the guiding light of the Committee—affirms the right of every American to work for a living whether or not he belongs to a union. Compulsory unionism in any form—"union," "closed," or "agency" shop—is a contradiction of the Right to Work principle and the fundamental human right which that principle represents.

2. WHAT IS A RIGHT TO WORK LAW?

A Right to Work law guarantees that no person can be compelled, as a condition of employment, to join or not to join or to pay dues to a labor union. The right of the states to enact Right to Work laws is reaffirmed by Section 14(b) of the Taft-Hartley Act. Nineteen states have passed such laws.

3. IS THE RIGHT TO WORK "ANTI-UNION"?

The Right to Work is neither "anti-union" nor "pro-union." It is a matter of individual freedom. The Right to Work Committee affirms the right of all Americans to join labor unions and to bargain collectively. But unions, after all, are private organizations. No other private organization in America insists on having the power to form membership on unwilling people. The Committee opposes *forced* unionization in all its forms.

4. WHAT EFFECT DOES A RIGHT TO WORK LAW HAVE ON A STATE'S STANDARD OF LIVING?

Statistics show that the nineteen Right to Work states enjoy greater economic vitality than do states where union membership is compulsory. Right to Work states fare as well or bettter in per capita income, growth in manufacturing and non-agricultural jobs, and capital expenditures. Right to Work states also have lower unemployment rates and fewer work stoppages.

5. WHAT IS 14(b)?

Section 14(b) of the Taft-Hartley Act guarantees to the states the right to enact Right to Work laws which prohibit compulsory unionism as a condition of employment.

6. HOW EFFECTIVE HAS THE RIGHT TO WORK COMMITTEE BEEN?

In its twenty-year history, the National Right to Work Committee has contributed to some remarkable victories for the freedom of America's workers. Some of the highlights include:

In 1965 the Committee led the last-ditch fight that saved Section 14(b) from repeal and, with it, the nineteen state Right to Work laws.

In 1970 the Committee alerted the public to plans that would have made the Postal Service a compulsory union shop. As the result of an unprecedented floor vote in the House of Representatives, the 1970 Postal Reorganization Act contains a Right to Work provision.

In 1975 President Ford, under intense grassroots pressure from Right to Work supporters, vetoed the

controversial "situs picketing" bill. The White House reportedly received more mail opposing this bill than on any other domestic legislation in history.

7. WHAT IS "COMMON SITUS"?

The "common situs" picketing bill (HR 5900 and S 1479) in the 94th Congress was aimed at legalizing secondary boycotts in the construction industry. Under the proposed law, any one union on a construction project would be able to shut down the entire site because of a dispute with only one subcontractor. The bill passed through the House of Representatives with little difficulty, and squeaked through the Senate. The bill was vetoed by President Ford, however, when an aroused public expressed overwhelming opposition. Public opposition to the situs bill was due in large part to the massive educational campaign of the Right to Work Committee.

8. WHAT IS "EXCLUSIVE REPRESENTATION"?

"Exclusive representation" gives a union the power to represent all employees in a company's "bargaining unit"—including employees who oppose the union and don't want its "services." This monopoly bargaining power is a special privilege granted to the unions by federal law.

9. WHAT DO UNION PROPAGANDISTS MEAN BY THE TERM "FREE RIDER"?

"Free rider" is the name given by advocates of forced unionism to any employee who does not pay the union for "services" he does not want but which he is forced to accept because of "exclusive representation." Such an employee is actually a "captive passenger" or "forced follower."

THE NATIONAL RIGHT TO WORK COMMITTEE

(Questions and Answers)

1. WHAT IS THE NATIONAL RIGHT TO WORK COMMITTEE?

The National Right to Work Committee, established in 1955, is a non-profit, non-partisan, single-purpose citizens' organization dedicated to the principle that all "Americans must have the right but not be compelled to join labor unions."

2. WHAT IS THE PURPOSE OF THE NATIONAL RIGHT TO WORK COMMITTEE?

The Right to Work Committee combats compulsory unionism through a multi-faceted program. The major aspects of that program are to:

1. Conduct a national education program to alert the American people to the evils of compulsory unionism and to gain support for Right to Work legislation.
2. Safeguard Section 14(b) of the Taft-Hartley Act (that section of the national labor law which reaffirms the right of states to have Right to Work laws).
3. Preserve the Right to Work for public employees.
4. Help state organizations to promote, enact, and protect state Right to Work laws.
5. Work to obtain legislation at the national and/or state level which will:

- Curb the use of compulsory union dues for political activity.
- Prevent compulsory unionization of farm workers.

• Ultimately obtain national Right to Work protection for all employees.

3. WHO ARE MEMBERS OF THE NATIONAL RIGHT TO WORK COMMITTEE?

The members of the Committee are men and women—in all walks of life, union members as well as non-union employees from every corner of America—who, through their voluntary contributions, support the work of the Committee.

4. HOW MANY MEMBERS DOES THE RIGHT TO WORK COMMITTEE HAVE?

The National Right to Work Committee is the largest single-purpose public-interest group in America. The Committee boasts over 700,000 supporters nationwide, almost half of whom have made contributions in the last twelve months. Studies have shown, moreover, that over two-thirds of the American people sympathize with the objectives of the Committee.

5. HOW MUCH DOES IT COST TO JOIN THE RIGHT TO WORK COMMITEE?

The members of the Right to Work Committee contribute whatever they can afford. Some people contribute hundreds of dollars each year. The average new member contributes just over twelve dollars.

6. AS A TAX-PAYING CITIZEN, DON'T I PAY ENOUGH FOR THIS SORT OF THING ALREADY?

The National Right to Work Committee receives no tax money. The Committee is a private organiza-

tion, financed entirely by the voluntary generosity of its contributors.

7. WHAT ARE THE CONTRIBUTIONS USED FOR?

Contributions to the National Right to Work Committee are used to promote the Right to Work principle through a variety of Committee programs. Of each yearly contribution, two dollars are specifically earmarked for a subscription to the Committee Newsletter which is issued monthly to keep members informed about events affecting Right to Work.

8. ARE CONTRIBUTIONS TO THE RIGHT TO WORK COMMITTEE TAX-DEDUCTIBLE?

Contributions are tax-deductible provided they have a business-related purpose. The Committee is a tax-exempt organization under Section 501(c)(4) of the Internal Revenue Code.

9. HOW DOES THE COMMITTEE DIFFER FROM THE NATIONAL RIGHT TO WORK LEGAL DEFENSE FOUNDATION?

The National Right to Work Committee and the National Right to Work Legal Defense Foundation are separate and distinct organizations. Their work, however, is complementary.

The Committee works for legislation which would outlaw all forms of forced unionization. It also conducts a nationwide educational program on the principle of Right to Work.

The Foundation, on the other hand, established in 1968, works solely through the courts to assist employees whose human and civil rights are being violated because of compulsory unionism. It engages in no legislative activity whatsoever.

Please return to:

Senator Orrin Hatch
National Right to Work Committee
8316 Arlington Boulevard
Fairfax, Virginia 22038

SPECIAL QUESTIONNAIRE FOR:

Please answer the questions below and return this form at once in the enclosed envelope. Your name will not be used without your written permission.

1. Do you feel there is too much power concentrated in the hands of labor union officials?

YES —— NO ——

2. Are you in favor of forcing state, county, and municipal employees to pay union dues to hold their government jobs?

YES —— NO ——

3. Are you in favor of allowing construction union czars the power to shut down an entire construction site because of a dispute with a single contractor . . .thus forcing even more workers to knuckle under to union agents?

YES —— NO ——

4. Do you want union officials to decide how many municipal employees you, the taxpayer, must support?

YES —— NO ——

5. Should all construction workers be forced into unions through legalized situs picketing thus raising the cost of building your schools, hospitals, and homes?

YES —— NO ——

6. Would you vote for someone who had forced public employees to join a labor union or be fired?

YES —— NO ——

TO HELP COMPILE AND PUBLICIZE THIS SURVEY AND INCREASE ITS COVERAGE ALL OVER AMERICA, I ENCLOSE MY CONTRIBUTION TO THE National Right to Work Committee OF:

$1,000——, $500——, $100——, $50——, $25——.

Other Amounts $——.

Senator Hatch: You may—— may not—— use my name when contacting my Congressman and Senators with the results of this survey.

SIGNED————————————

* * * *

xu. The following include one sample from section 56 and one sample from each section of JEB tab 59, except from the miscellaneous items found at JEB tab 59g:

NATIONAL RIGHT TO WORK NEWSLETTER

Published by the National Right to Work Committee
8316 Arlington Blvd., Fairfax, Va. 22038

Vol. XXII. No. 5 May 25, 1976

DEMOCRATIC PRESIDENTIAL CONTENDERS BENT ON DESTROYING RIGHT TO WORK

[Cartoon Omitted in Printing]

In an effort to prove their worth to the political courtesans of Big Labor, every one of the leading Democratic Presidential candidates has promised to support repeal of the Right to Work provision in federal labor law.

Though the federal law specifically authorizes compulsory unionism. Section 14(b) of the Taft-Hartley Act reaffirms the right of individual states to outlaw forced union membership. Nineteen states have done so. Repeal of this provision has been a major goal of the bosses of Big Labor ever since it was enacted.

All of the Democrats who are believed to have a chance of winning the nomination—including former Georgia Governor Jimmy Carter—want the freedom of choice provision repealed.

Though the issue is not a partisan one (an attempt to repeal Section 14(b) in 1965-66 was rebuffed by a bi-partisan coalition of Senators led by Illinois Republican Everett M. Dirksen and North Carolina Democrat Sam Ervin). President Gerald R. Ford has taken a firm stand against repeal of 14(b). His Republican challenger, Ronald Reagan, says he is "leaning" that way.

HARD TIMES FOR CHAVEZ' FARM UNION

Here are the positions of the leading candidates:

• California Governor Edmund G. (Jerry) Brown —In an April 12 editorial, the WHITTIER (CA) DAILY NEWS noted that the Governor's opposition to Right to Work "lines him up with those who do not think a worker should be free to join an organization or not join an organization. If Governor Brown does not believe a citizen should be as free to choose his work as to choose his church or a town to live in, he should say so in plain terms." Two weeks later, during a Maryland campaign swing, the Governor did just that—saying he opposes Section 14(b) and Right to Work laws.

• Former Georgia Governor Jimmy Carter—Speaking recently in Waukesha, Wisc., Governor Carter dispelled any doubt about his position, saying: "I think Section 14(b) should be repealed, which would permit the abolition of Right to Work laws, and if the Congress passes such legislation, I'd be glad to sign it." There had been some confusion over Carter's position, stemming from a 1971 letter to the National Right to Work Committee in which he said he was "not in favor of doing away with the Right to Work law." Carter's about face has shocked some of his long-time supporters like Gerald Anderson, Democratic Party Chairman in Georgia's Second Congressional District, who announced recently that he was withdrawing his support for Carter because of his new anti-Right to Work position.

• President Gerald R. Ford—In his first statement on Right to Work since assuming the Presidency,

President Ford recently told the publisher of SAN ANGELO (TX) STANDARD-TIMES, that he opposes elimination of Section 14(b). "I would, under no circumstances, take that right away from any state by either law or constitutional amendment."

• Senator Henry (Scoop) Jackson—Senator Jackson continues to court favor with top union officials by attacking voluntary unionism at every occasion.

• Former California Governor Ronald Reagan—Governor Reagan has spoken out on Right to Work only once during the campaign, saying that he was "leaning . . . very heavily toward Right to Work."

• Representative Morris Udall—Congressman Udall has repeatedly promised union officials that he will conduct a crusade against Right to Work if they help him get elected President.

NEW CAMPAIGN LAW INCREASES UNION POWER

Union officials were given an even bigger advantage in their ability to manipulate election against the public interest, when President Gerald R. Ford agreed to sign the controversial new campaign financing law this month.

Under the misnamed reform bill, union officials are allowed—even encouraged—to continue their practice of pouring millions of dollars in forced dues money through loopholes to get and keep their chosen puppets in Congress.

The "reform" bill also hands union organizers a new tool to facilitate dragooning more and more wage-earners into unwanted unions, by making it

mandatory for company officials to release the names of non-union workers to union officials for alleged political solicitation.

Reed Larson, executive vice president of the National Right to Work Committee, said the new law was "cleverly drafted and guided through George Meany's rubber-stamp Congress by union agents. Its sole purpose is to strengthen the already gargantuan union role in election campaigns at the expense of millions of wage-earners forced to pay dues in order to work for a living."

Larson noted that the new law not only preserves the major legal loopholes through which union officials maintain their political advantage, "but it also makes the use of compulsory dues more significant than ever because this 'reform' bill curbs the legitimate political activities of other groups, thereby effectively shutting out competition with union bosses and their largess of compulsory dues."

Despite enactment of a state farm labor law designed to expedite the forced unionization of California farm workers, Cesar Chavez's years-long crusade to make himself king over America's farm laborers has fallen on hard times.

Throughout his organization's history, Chavez has demonstrated a remarkable inability to get workers to join voluntarily. As a result, he has done his "organizing" by waging war against the growers, pressuring them to force their employees into an unwanted union.

His ability to win these wars during the early 1970's hinged largely on his ability to gain support from benighted clergy and various political and social activists. Their continued allegiance, however, appears to be very much in question.

"Chavez falls back on boycotts because he finds it easier to win favor among shoppers in parking lots than among . . . (workers)," admits Sister Thomas More Bertels, a one-time Chavez activist. "He seeks to achieve in the supermarkets of suburbia what he apparently cannot achieve in the fields of California."

Writing in the April issue of FARM JOURNAL Magazine, Sister Bertels says that "like hundreds of other adherents of the social gospel, (she) had refused to eat grapes and lettuce," assuming "that the information being disseminated in the classroom, from the pulpit, and by the media was unadulterated truth." To her amazement, however, she learned otherwise.

She learned, for example, that Chavez never had the voluntary support of even a sizeable minority of the farm labor rank-and-file. (At one point, while he was being hailed as spokesman for all of California's farm workers, a report on file with the Labor Department showed fewer than 2,500 voluntary members.)

She learned that the Chavez union, run by cadres of social activists, openly discriminates against workers which the union bosses consider a threat to their movement.

She learned too that the only way Chavez was able to recruit "members" was by promoting product boycotts which compelled the growers to sign contracts requiring their workers to join the union.

Armed with fact rather than propaganda, Sister Bertels thinks it important enough to speak up.

"What right have they to decide which union is best for the farm workers? They have placed the church and the academic community in the untenable position of insisting that the workers have freedom of choice, then maligning that choice if it does not square with theirs."

Special Report . . . Part 1 (The Problem)

With increasing frequency, union organizers have been turning to strong-arm tactics to enforce their demand that everyone join a union in order to work. Here, NEWSLETTER editor Herbert Berkowitz takes a closer look at the problem and its causes, in an exclusive series of interviews with some of its victims.

JOIN THE UNION . . . OR ELSE!

By Herbert Berkowitz

It's hard to locate Sammy Kirkland these days. He doesn't answer his mail. He spends most of his time on a hog farm, away from his home in Ft. Myers, away from everyone.

He's been trying to keep a low profile ever since the union mob nearly killed him, breaking three ribs in the process, temporarily blinding him, threatening to cut off his arms, and all because he refused to join the local operating engineers union.

Kirkland isn't the only one whose life has changed as a result of his refusal to abandon his right to work to a union goonsquad.

Four of the union agents responsible for the attack on the work crew at Marco Island, Florida, are serving jail terms. Though defense attorneys had asked for leniency, they were given harsh sentences by Collier County circuit court judge Henry Balaban. Recalling his encounter with Kirkland, the judge noted upon pronouncing his sentence, "I sat here in this very chair and I saw a young man take the stand physically outside beautiful in appearance, but who has permanent brain damage . . . and that means his life is virtually ruined.

"I couldn't help but say to myself, 'What is that man going to do? How are these gentlemen going to repair the damage, make well that person who is sick and disoriented?' That person too has a right to enjoyment of life."

Judge Balaban recalled the 1972 incident which left Kirkland crippled, when some 60 to 100 men descended upon Kirkland and his co-workers, including a plainclothes detective who was working undercover.

". . . a man trying to eke out a living operating a backhoe, and this large group of men descended on him and hurt him immeasurably.

". . . They were bent on evil . . . bent on hurting and harming," the judge said. "They invaded that man's rights and the rights of others in the community. This violence, in my judgment, is something that is evil and struck at the very roots on which our government is based . . . If your community has any sensitivity at all, you know that every man has the right to walk the streets and pursue his occupation free of interference from anyone else."

The sentence, for leaving a man broken and his life shattered: five years in prison. (Kirkland also filed a damage suit against the local and international unions. Earlier this year, union officials agreed to a $165,000 out-of-court settlement, one of the largest financial settlements ever obtained in a union violence case. Still, said Kirkland's National Right to Work Legal Defense Foundation attorney, "no amount of money can compensate him for the damage that's been done.")

KIRKLAND'S CRIME

Sammy Kirkland's "crime," of course, is not an unusual one. He had voluntarily chosen, as some

three-fourths of all Americans have chosen, not to affiliate with a union. He was meted punishment accordingly by union agents acting as judge, jury, and hangmen in the most vicious fashion imaginable.

Unfortunately, what happened to Sammy Kirkland four years ago in Florida is not an isolated incident. Beatings, bombings, shootings, threats—subtle and not-so-subtle—have become a standard organizing tool for many union officials who, after exhausting more conventional ways, apparently have decided that only through coercion, intimidation, and force can they convince workers that it's in their best interests to join certain unions.

And anyone who defiantly refuses, as did Sammy Kirkland and his colleagues on the Deal Erection Company work crew, will be dealt with accordingly.

How?

In January, a Lake Charles, Louisiana, construction site was invaded by a gun-toting mob, several members of a "renegade" union were shot, one killed, and the site torn apart. Several men, including Donald Lovett, business manager for the Southwest Louisiana Building and Construction Trades Council, AFL-CIO, have been indicted and charged with a variety of crimes, including manslaughter and first degree murder.

For the past several years, the Denver, Colorado, area has been hit with a string of mysterious fires at construction projects being built by contractors who refused to hire union members only. By 1974, more than 40 condominium and townhouse developments had been gutted. Among those convicted, Tony Mulligan, chief organizer of the Northern Colorado Building and Construction Trades Council, AFL-CIO. William Swanson, business agent of Denver's tough cement masons, and Edward L. Urioste, an agent of

the international carpenter's union in Washington, who was apparently the supplier of the explosives used in the torch jobs.

In Pennsylvania, J. Leon Altemose and the employees of his construction company have similarly been under seige. One former associate told how "They threatened to put my daughter (2 years old) in a burlap sack and smash her up against a wall. I told them I'd kill them if they did." Altemose's "crime": he refuses to fire those among his employees who aren't card-carrying union members.

All across the country it's the same. Either join a union, or suffer the consequences—which can range from the relatively civilized discharge from one's job in the case of a person working in a shop with a compulsory unionism agreement between the employer and union; to the brutal and primitive, like firebombings, beatings, and even murder.

The attitude of the bosses of Big Labor is far from hidden. Tom Magrann, a former boxer turned plumber and now head of the giant greater Philadelphia Building Trades Council (and chief nemesis of Altemose) probably said it as well as anyone: "Everyone has a right to work and everybody has a right to go out and make a living . . . They either want to be union or else they want to be non-union. Morally and principle-wise I think everybody in this country should be union."

In other words, everyone has the right to work, so long as he's a union member.

So when Altemose refused to stop hiring non-union workmen he was hit, and hit hard.

In June 1972, a month after the mob attack on Kirkland, 1,000 "protesters" showed up at Valley Forge (Pa.) Plaza, flattened the 4,000 foot fence which surrounded the job site, burned several build-

ings, burned a model house, and destroyed much of Altemose's equipment. Total damages $300,000. Since then, much, much more of the same, including a brutal beating on a downtown Philadelphia street.

In New York, Pennsylvania, Missouri, New Jersey, Delaware, Michigan, Virginia, Florida, Colorado, Louisiana—in state after state, sometimes on a grand, swashbuckling scale, sometimes on a lesser scale, attacks on workers who for one reason or another refuse to join unions, and attacks on employers who refuse to force their employees into unwanted unions.

The right to walk the streets and pursue one's occupation that Judge Balaban so movingly addressed, just so much claptrap to many union bosses. To them, you either join (if you can), or else.

LAKE CHARLES

The American Federation of Unions, Local 102, came into existence only a couple of years ago when it became apparent to a group of Louisiana workers that they would never get decent jobs because of the rampant cronyism of the local AFL-CIO.

Only blood relatives, and friends, and friends of friends got jobs; so they formed their own unions, these local boys, and membership now runs in the hundreds.

It was one of their own. "Little Joe" Hooper, 26, the father of two young children, who was shot and killed on January 15 when he dared show up to work at the Jupiter Chemical Company construction site in Lake Charles.

Besides his family, if there was anyone who felt the full emotional force of Hooper's death it was D. J. "Shorty" Landry, a 37-year-old bulldog of a man and

long-time member of Iron Workers Local 678, AFL-CIO.

Landry was the guy who was instrumental in getting Hooper his job. The night before the attack on the Jupiter job site, the night before Hooper was to have started his new job, he called Shorty "to thank me for the best opportunity of his life." Hours later, Hooper was dead, shot in a commando style raid that until it was over nobody really believed could or would happen, not even in Calcasieu Parish, which has a history of union violence.

Shorty Landry, like many other people in Lake Charles, now carries a gun everywhere he goes. "They're supposed to have contracts out on me," he says casually. But casual he isn't, with an elaborately rigged auto alarm system, installed to prevent a bomb from being planted on his car.

Though "born union . . . and raised union," like most Americans (some 75% according to a March 1976 study by Opinion Research Corporation), Landry believes American workmen shouldn't have to join unwanted unions in order to get or keep their jobs.

Shorty Landry believes in the right to work. He believes "there's enough work in this country for everyone," union and non-union alike. But Shorty Landry, and Little Joe Hooper, found out the hard way that some people don't look at matters that way, that some people believe the right to work is one that is restricted to union members only. All others keep out.

What took place in Lake Charles, Louisiana, came as a total shock to R. V. "Bob" Kerley of Phoenix. Owner, along with his three brothers, of Kerley Chemical Corporation of America, Kerley went to Lake

Charles when it occurred to him that some of the industrial hydrogen waste materials from local manufacturers could profitably be turned into industrial ammonia. So he poured his life savings into the construction of a plant to do just that, the Jupiter Chemical plant.

Coming from a state with a right to work law, where union and non-union employees work side by side, in peace, Kerley unfortunately had no idea what he was getting into. "I didn't come here to crusade for anything (I) just came here to get a job done."

[Pictures Omitted in Printing]

Now Kerley has that crusade on his hands.

First there was the featherbedding. Then other minor problems, a warning that he ought to send his son, Bob, back to Phoenix, where he'd be safe. Then there was the meeting with union agents, in which Kerley was told that for $30,000 things would be okay. Constant rumors. But still construction moved ahead, painfully slow.

When it took five union work crews, instead of the needed one or two, to unload a barge full of used equipment, Kerley decided something had to be done, before he went broke. (Originally estimated at $4 million, the Jupiter construction project is now expected to cost closer to $7 million.)

He reluctantly contacted Shorty Landry, whose Brimstone Fabrication shop, established in 1971, employed members of Local 102, Kerley was hesitant, he says, not because he thought the bosses of the other unions might object, but because he had been told that Shorty would be killed.

Landry acknowledges that there had been "a lot of stuff floating around the streets as to what they were going to do," but even he didn't expect what happened. After all, the men in Local 102 are "just local

people trying to raise a family in Calcasieu Parish . . . neighbors," and many of them former members of the other unions.

Unfortunately, when the members of Local 102 showed up for their jobs, the members of the other unions walked off theirs. Kerley had hoped they would stay; he even asked them to stay. But the union bosses wouldn't have any of it. After that, it was pretty well understood that there would be trouble the next day, January 15, some name calling, maybe some fights, some vandalism perhaps.

Shorty Landry called the sheriff's office before breakfast, about a half hour before the trouble began. He knew that a police car or two on the scene would prevent things from getting out of hand. The police dispatched a cruiser, everything was quiet, the officers reported, then left.

A few minutes before 7:00 Landry ran into one of the AFL-CIO business agents at the Cajun Kitchen, a Lake Charles eatery about a mile from the job site. A few minutes later all hell broke loose.

Bill Baker, 36, was one of the 11 men in the construction trailer when it was inundated with gunfire. A mechanical engineer, who had come to work at the Lake Charles job from Houston, Baker watched calmly as the raiding party crashed through the gate with a forklift, as they overturned cars in their path, even as they overturned his own. It was not until the bullets started flying that he realized what was going on. "I really thought I was gonna die," he recalls.

Joe Hooper, who was filling out his employment papers at the time, was hit by one of the first shots. Baker and the others attempted to make Hooper as comfortable as possible, but he was bleeding "real

bad." Minutes later he was dead. He had done the unforgivable—tried to earn a living without being a member of a certain union.

Like many of Lake Charles' 85,000 citizens, Hugh Shearman, editor of the daily Lake Charles American Press, acknowledges that bad will become worse unless the murderers of Joe Hooper are convicted. Right now, with good reason, many people are just plain afraid, the former Marine Corps officer and one-time Congressional candidate admits.

"I've never lived in a community where there's so much intimidation and fright and people are so scared to talk," observes Kerley.

Though we were able to talk with many people in Lake Charles, almost without exception they refused to allow their names to be used. Their attitude was one of wait and see. "My family's here; I'm anchored here; you don't throw gasoline on a fire," said one small construction operator, who like Shorty Landry says he will probably have to move somewhere else if the goons aren't convicted. Why doesn't he want to be quoted? He's afraid his equipment will be "blown up, burned up" or otherwise sabotaged. Despite his membership, for 34 years, in a union he also feels that the only solution to the long-standing union violence problem in Calcasieu Parish is a state right to work law.

Next Month: The Solution

[Picture Omitted in Printing]

Right to Work NEWS BRIEFS . . . "MAKE 'EM JOIN"—Labor Secretary W. J. Usery, Jr., [picture omitted in printing] the former Machinist Union organizer who feels Right to Work supporters are "bigots," now claims the freedom to decide whether or not to join a union is obsolete. Speaking recently in Seattle, Usery said the 19 Right to Work states aren't "keeping up with the times," an apparent reference—undoubtedly—to the fact that they aren't suffering from the economic stagnation which has crippled most of the 31 compulsory union states. While insisting that he wasn't "advocating" such a position, Usery said he thought Section 14(b) of the Taft-Hartley Act should be repealed. Only by destroying their Right to Work laws, the Secretary of Labor feels, can he drag the voluntary union states down to the level of the others, and keep them up with the times . . . HANDS OFF—Arkansas Gov. David Pryor and Louisiana Gov. Edwin Edwards say they will stay "neutral" in the current fights over state Right to Work laws. In Arkansas, state union officials are trying to get a place on the ballot for a proposed referendum to destroy the state's constitutional ban on compulsory unionism. In Louisiana, grassroots support for a state Right to Work law continues to mount, leading Governor Edwards to say he won't get involved in the legislative fight, but will sign the law if it passes the legislature . . . BIG LABOR FRONT?—The allegedly impartial American Association of Retired Persons, in its April bulletin, attacks Right to Work laws as "anti-labor." The organization which supposedly represents the interests of older Americans, admits that many of its goals are "identical or similar to those espoused by the AFL-CIO and other unions." Since Right to Work laws help older Americans by promoting economic stability, it is hard to see how opposition to voluntary unionism is in keeping with the

organization's purpose . . . FIGHT FIRE WITH FIRE—One sure-fire way to measure an area's attractiveness, especially to retired persons living on a fixed income, is by taking a look at its cost of living index. According to a Bureau of Labor Statistics analysis of 40 metropolitan areas, the cost of living is consistently lower where union membership is voluntary. In fact, every one of the nine Right to Work areas included in the Bureau's latest survey has a cost of living significantly below the national average. Of the eight cities with the lowest living costs, six are in voluntary union states—Houston, Atlanta, Orlando, Dallas, Nashville, and Austin. There are large retirement communities in virtually all of these cities . . . SUPREME TEST—The Supreme Court will decide whether public employees can be forced to pay fees to a union they don't want representing them. The case involves some 600 Detroit teachers who object to paying compulsory "agency shop" fees to the Detroit Federation of Teachers. Legal assistance is being provided to the teachers by the National Right to Work Legal Defense Foundation . . . FASCIST ECONOMY—That's what America is heading for as a result of compulsory unionism and various other government policies, designed to reduce individual freedom of choice. In a new book, ("America's Emerging Fascist Economy," Arlington House, $12.95), Charlotte Twight, a former editor of WASHINGTON LAW REVIEW, suggests that "Although (compulsory) union-shop agreements are superficially 'voluntary' contractual arrangements, it is the government-imposed exclusive bargaining-agent relationship that causes union-shop agreements to flourish. Once an employer is compelled by law to grant a union . . . a monopoly over his labor supply," Mrs. Twight writes, "it is of little consequence to him whether or not his employees are forced to join the union."

NOW AVAILABLE

The Hundred Million Dollar Payoff by Douglas Caddy. Secret union documents show how union officials conceal spending tens of millions of dollars each year on their political favorites in Congress—in flagrant violation of the laws forbidding the use of compulsory union funds in federal campaigns. *New paperback version*, $1.25, 5 for $5.00.

Labor Unions: A Question of Violence. Produced earlier this year by CBS News for its "60 Minutes" series, this highly-acclaimed 18 minute color film shows people and ideas in conflict as Philadelphia union thugs try to impose their will on the employees of J. Leon Altemose. One union boss is very candid in the film: sure everyone has the Right to Work, he says, so long as they're union members. Rental fee is $25.00.

National Right to Work Committee
8316 Arlington Boulevard
Fairfax, Virginia 22038

1) Please enter my subscription to the Right to Work *Newsletter* ($2.00 per year.)

2) Please send ———— copies of *The Hundred Million Dollar Payoff*.

3) Please reserve *Labor Unions: A Question of Violence* for showing on ——— (date).

Name ————————————————

Address ————————————————

City ———————— State ——— Zip ———

Amount Enclosed $———.

An Editorial
LYNCHBURG (VA) NEWS
April 14, 1976

The Richmond Times-Dispatch:

'GLAD TO SIGN'

During his brief visit to Virginia Monday, Jimmy Carter, currently the leader in the race for the Democratic presidential nomination, demolished one rumor that his critics have been circulating about him. It is not true, we know now, that Carter simply cannot take an unequivocal stand on any issue, for in Roanoke he unhesitatingly, unreservedly endorsed 4-H clubs. Reporters heard him do so and recorded his firm views for the benefit of all skeptics.

On much less important issues, however Carter did attempt to waltz around without taking definite stands. But even then, it was not always difficult to tell exactly what he thought.

Take the right-to-work issue, for example. Right-to-work laws that have been adopted in Virginia and 18 other states, including Carter's Georgia, are authorized by Section 14-B of the federal Taft-Hartley Act. Their purpose is to protect the freedom and dignity of individual workers by shielding them from compulsory membership in labor unions. Under the right-to-work principle, workers are free to join or not to join, as they desire.

This is eminently fair and in complete harmony with traditional American concepts of justice, liberty and independence. But leaders of organized labor hate Section 14-B and right-to-work laws because they would like to force all workers in unionized industries to become dues-paying supporters or mem-

bers. The more members and money they have, the more powerful the unions are.

Back in 1971 when he was governor of Georgia, Carter assured the National Right-to-Work Committee that he was "not in favor of doing away with" right-to-work laws. But what is he saying now that he is trying to become president of the United States? Well, in Roanoke he said:

"If Congress repeals 14-B and it is placed on my desk I will be glad to sign it. But I'm not going to take this on as a crusade."

With that statement, Carter probably hoped to straddle the issue, something that he is quite good at doing. But he really didn't. Anyone who would be "glad to sign" a bill that would nullify right-to-work laws and permit labor bosses to subjugate workers in 19 states is a foe of the right-to-work principle, even if he doesn't take the matter "on as a crusade." And that is why Carter, despite his waltzing, has made his position on this issue crystal clear.

LEGISLATIVE BULLETIN

An Information Service of the
National Right to Work Committee

March 31, 1978

Dear Maryland Committee Member:

Your outstanding work defeated union organizers and several of their pet public employee compulsory unionism bills this year.

One of these bills—HB 1662—could have forced *all* state, county, and municipal employees to accept an unwanted union as their exclusive representative.

But the bad news is that union lobbyists did ram two of their many bills through the House of Delegates. And they think they'll get away with shoving them through the Maryland Senate, too.

These bills are HB 2034 and HB 1357. They are compulsory unionism bills. They apply only to Prince Georges County.

The paid union officials behind this scheme think that you won't fight this legislation unless you live in Prince Georges County.

The Maryland legislature turned down a statewide bill the union bosses wanted. And we're very grateful for that.

But what the union bosses are trying to do is to pick off counties one by one, until they get what they wanted in the first place—the whole state!

That's why we must stop them now, in Prince Georges County.

Maryland Senators must be told that bills which authorize compulsory unionism for public employees in *any* county in Maryland are just as bad for the

public interest and just as unacceptable as the ones that give union bosses statewide privileges.

Union officials must not be allowed to extort fees from classroom teachers in Prince Georges County. But that's exactly what HB 1357 gives them. This is strictly a giveaway to union bosses, and nothing else. No other issues are even discussed in the bill—just the so-called "agency shop."

And HB 1357 makes it *mandatory* for your elected public officials to negotiate with a private union the forced payment of fees as a condition of employment in the Prince Georges County schools.

H.B. 2034 does the same thing to Prince Georges Community College employees.

In the first place, it forces all employees to accept an unwanted union "representative" (exclusive representation).

Then, it gives the authorization for union officials to collect fees for that unwanted "representation."

And the bottom line in both bills—HB 1357 and HB 2034—is that if these Prince Georges County public employees don't pay, they will be fired!

HB 2034 has passed the House of Delegates, and HB 1357 could be passed by the time you get this. So we can't delay!

Here's what you have to do:

A) Write to your Senator (see enclosed list of Maryland Senators). Urge him to reject HB 1357, HB 2034, and any bill that would force compulsory unionism on Prince Georges County, or any other public employees in any other county in Maryland.

B) Tell your friends, neighbors, relatives, and associates about this county-by-county compulsory unionism scheme, and urge them to contact their Senators, too.

Remember, we've stopped the union lobbyists so far this year from getting any statewide compulsory unionism passed.

Now Maryland Senators must hear from you that compulsory unionism is not acceptable on a county-by-ccunty union-boss takeover—in Prince Georges, or any other county.

You've shown that we can make a difference. Please act again for the sake of freedom of choice.

Sincerely,

/s/ Andrew E. Hare
ANDREW E. HARE
Vice President, Legislation

P.S. The Senate could act on this legislation any time. Please don't delay—write today.

Rosalie Silber Abrams
D—Baltimore

John J. Bishop, Jr.
R—Annapolis

Clarence Blount
D—Baltimore

Joseph Bonvegna
D—Baltimore

Elroy Boyer
D—Chesterstown

Peter Bozick
D—Annapolis

Tommie Broadwater, Jr.
D—Hyattsville

John Carroll Byrnes
D—Baltimore

John A. Cade
R—Severna Park

James Clark
D—Columbia

Jerome F. Connell, Sr.
D—Pasadena

Edward T. Conroy
D—Bowie

John C. Coolahan
D—Baltimore

Victor L. Crawford
D—Rockville

J. Joseph Curran, Jr.
D—Baltimore

Victor Cushwa
D—Hagerstown

Arthur Dorman
D—Beltsville

Robert Douglass
D—Baltimore

Cornell N. Dypski
D—Baltimore

John J. Garrity
D—Hyattsville

Charles Gilchrist
D—Rockville

Edward T. Hall
R—Prince Frederick

Arthur H. Helton, Jr.
D—Aberdeen

C. A. Porter Hopkins
R—Annapolis

Steny Hoyer
D—District Heights

Donald P. Hutchinson
D—Baltimore

Julian Lapides
D—Baltimore

Laurence Levitan
D—Potomac

Harry McGuirk
D—Baltimore

Frederick C. Malkus, Jr.
D—Cambridge

Edward J. Mason
R—Cumberland

Thomas V. Miller, Jr.
D—Clinton

Clarence Mitchell
D—Baltimore

Thomas P. O'Reilly
D—Lanham

Margaret Schweinhat
D—Kensington

James Simpson
D—Waldorf

Charles H. Smelser
D—Annapolis

Roy N. Staten
D—Annapolis

Newton I. Steers, Jr.
R—Montgomery Co.

Melvin A. Steinberg
D—Towson

Norman R. Stone, Jr.
D—Baltimore

Robert E. Stroble
Lutherville—Timor

Edward P. Thomas
R—Frederick

Michael J. Wagner
D—Glen Burnie

Verda Welcome
D—Baltimore

E. Homer White, Jr.
D—Salisbury

Lawrence Wiser
D—Silver Spring

Telegrams and letters intended for Senate members listed above should be addressed as follows:

Hon. _____
Maryland Senate
State Capitol
Annapolis, Maryland 21404

The Washington Post

PRINCE GEORGE'S TEACHERS BILL: A POLITICAL PROCESS SIDESHOW

By David A. Maraniss
Washington Post Staff Writer

ANNAPOLIS—Every Friday morning from January to April the 24 members of the Maryland House of Delegates from Prince George's gather around an E-shaped arrangement of tables on the second floor of the House office building to consider bills that deal solely with matters in the home county.

The delegation meeting, because of its provincial nature, is often considered a necessary but innocuous sideshow to the grand presentation of committee hearings, floor sessions and press conferences that dominate the three-month session of the General Assembly.

Sometimes, however, these weekly meetings illustrate the dynamics of the political process. Yesterday was one of those times.

The delegation, facing one of the weightiest local issues of the session, balked. Before them was a bill to require county public school teachers to pay dues to their union, creating what is known as an "agency shop." This is a plum normally negotiated, not legislated, and the lobbying surrounding it befited the importance of the issue.

The delegates handled the pressure by approving two bills; one that would mandate the agency shop by law, the other would merely direct the county school board to negotiate the issue at the bargaining table.

Both were sent to a House committee where delegates who have little interest in Prince George's af-

fairs will decide which, if either, measure should become law. "It's an intriguing idea to me to send a cliffhanger like this to someone else to struggle with," said Del. Robert Redding, who voted for both bills.

Although the two bills affect a small percentage of the nearly 700,000 county residents (the 7,900 school teachers, an estimated 900 of whom do not pay dues to the Prince George's County Educators Association), the agency shop question was the most talked about, lobbied for, lobbied against issue the delegates have confronted this year.

Retribution, jealousy, election-year jockeying, special interest pressure—all joined basic philosophical conviction as apparent factors in the delegation's handling of an issue that Del. Lorraine Sheehan said was "loaded with behind-the-scenes ramifications."

Del. Frank Pesci, sponsor of the school board-supported bill that would make agency shop a negotiable issue, said the interest in the bills was "immense." "You could say this is this year's convention center," said Pesci in reference to a controversial and unsuccessful attempt to get state-funding for a convention center in Prince George's County last year.

The agency shop bill, if passed by the General Assembly, would be a major victory for the PGCEA and its ambitious president, Toby Rich, who has been attempting to make the association a powerful interest group that can influence legislation and elections.

The bill's passage would also serve to the advantage of Del. Fred Rummage, who is both of this all-Democrat delegation and executive director of the PGCEA. Rummage, according to his colleagues, has removed himself from the agency shop issue, refusing to discuss it or to chair meetings where it is being

discussed. "But," noted Pesci, "it's impossible for him to disclaim the fact that he has a vital interest in it."

For most of this week, supporters of both bills took turns calling it a "toss up," with Rich saying he believed he had a majority for the mandate measure and Pesci saying much the same about his bill. The legislative lobbyist for the school board shadowed Rich through the corridors of the House office building in search of votes.

They encountered five or six delegates who were uncommitted. Del. Kay Bienen was won over to the PGCEA-endorsed bill when she was allowed to amend it so it would not affect non dues paying teachers currently under contract. Del. John Wolfgang, who once said he was opposed to the agency shop concept, joined Pesci's side after deciding that one or the other of the two bills would pass and he might be the only delegate voting against both of them.

Del. B. W. (Mike) Donovan, found nothing intriguing about the agency shop bills from the moment he heard about them. "It's not a big issue for the average citizen," he would say when asked how he would vote. But it was, he would admit, a fairly nettlesome issue for him.

One problem for Donovan was that Sheehan was chief sponsor of the bill that mandated an agency shop. Donovan and Sheehan both represent the 26th district and both would like to succeed gubernatorial candidate Steny Hoyer as the district's senator.

"The PGCEA (which lobbied for Sheehan's bill) is becoming very active politically and Mike knows it," said Sheehan. "My reading of him was that he didn't like the bill, but couldn't afford to vote against it and risk losing the association's support."

Donovan, before the vote, discounted that argument, but would not reveal his preference. "I'm just going to wait and see how the delegation feels," he said. "I'll get a sense of the delegation before deciding which way to go. There's no use fighting the sense of the delegation."

He stuck to that position to the end. When Sheehan's bill came up for a vote yesterday, Donovan "passed" until the required 13 "ayes" had been uttered, then added his name to the majority.

Leo Green, a maverick delegate from Bowie who was endorsed by the teachers but not by the Democratic party organization in the 1974 election, found himself in the same box as Donovan.

"I'm waiting for the word," said Green the night before the vote. When asked what word he was waiting for, Green said he wanted to know how County Executive Winfield M. Kelly Jr. and several council members felt about the two bills. The word came back, as one delegate put it, that "the county has reiterated its position that it has no position." Green decided to abstain.

MEMBERSHIP ALERT

A Bulletin from the
National Right to Work Committee

Dear Right to Work Committee Member:

The union bosses are back on Capitol Hill with a new power grab.

That's why I'm writing you this Fourth of July weekend. And why I hope you'll take a minute to write your two U.S. Senators and ask your friends and neighbors to do the same.

It's vital you do so at once!

Earlier this year, I asked you to help stop the "common situs picketing bill." And you did. Your cards, letters, and even more important, your financial support killed situs picketing.

With your help we raised the money, wrote thousands of letters, placed full-page newspaper ads, lobbied every member of Congress, commissioned a scientific public opinion survey—and we beat them.

We temporarily thwarted their plan to repeal Taft-Hartley's Section 14(b) and pass situs picketing. We threw their steamroller off course.

But their new scheme is even more sinister.

They're going all-out to pass a series of phony "campaign reform bills" designed to further tighten their stranglehold on the American political system.

That's right! Even though present federal law is heavily weighted in Big Labor's favor, the union bosses want even more power.

They want to pass new laws providing for—taxpayer funding of federal candidates—instant voter registration—Hatch Act repeal—and other so-called "reforms."

S. 926 and HR 5157, the bills to use our tax funds to finance federal election candidates, would severely restrict the right of individual citizens to make contributions to these campaigns while leaving untouched the use of compulsory union dues for political and ideological purposes.

Already, union officials pour millions of dollars in forced union dues—through loopholes—to put and keep their chosen puppets in the Congress.

The real problem is union "in kind" political support, not the *reported* cash contributions.

Reported union contributions amonut to a "mere" five or ten million dollars each election year. It's the hidden union money, taken from forced dues, that gives union bosses their power to control elected officials.

And the situation is going to get worse unless you and I act together.

The Union Czars plan to completely dominate the 1978 Congressional Elections so they can pass any bill they want.

And you know what kinds of bills those are!

I'm sure you can see that if the union bosses succeed with their "campaign reform" schemes, they'll have even more power with which to take control of America's workers.

Union agents, not employers, will decide who is hired and how much work they'll do. Union-dictated featherbedding will drive your cost of living out of sight.

Runaway featherbedding, mushrooming makework practices and increased labor turmoil will mean:

> . . . your taxes will be increased to pay the higher cost of hospitals, schools and government services

... prices you pay for most everything will go up

... the country's economy will greatly suffer

... unemployment and inflation will increase

... the cost of building a new home or adding an extra room will go even higher.

And these are just a few of the disastrous effects this legislation will ultimately have on you and others in your

[Material Missing]

[JEB TAB 59b]

Letter #1

SURVEY '76

8316 Arlington Boulevard, Suite 600
Fairfax, Virginia 22030
Tel. (703) 573-8550

A Project Of The
National Right To Work Committee

January 23, 1976

Dear Committee Member:

Will you take part in *SURVEY '76* to help us effect a Congressional housecleaning this year?

Recently Senator Barry Goldwater said that most members of the present Congress are "owned" by the union bosses. He wasn't exaggerating!

The recent "common situs" fight proved conclusively that most members of the U.S. Senate and House of Representatives are obligated by political debts to vote as the union hierarchy dictates. That obnoxious bill would have become law if the National Right to Work Committee's members and friends had not prevailed upon President Ford to veto it.

The 1976 political goal of AFL-CIO president George Meany and his henchmen is to maintain their present strength in Congress *and* propel a hand-picked presidential hopeful into the White House. If successful, they won't have to worry about overriding future presidential vetoes of their pet bills.

The nation's voters will have opportunities to improve the make-up of Congress during the state primary elections and next November's general election. *All 435 House seats and 33 Senate seats will be up for grabs this year,* and it's essential that voters know candidates are against compulsory unionism.

The purpose of *SURVEY '76* is to identify those candidates who, if elected or re-elected to Congress, will strive to restore full freedom of choice to all wage-earners throughout the country. Experience has shown that such candidates can be identified most effectively *before state primary elections and state political conventions.* Because comparatively few voters participate in the nominating processes, individuals who act before the primary elections will achieve more than persons who wait until the fall campaign to get involved.

On Tuesday, March 16, 1976, *Illinois voters* will choose Democratic and Republican nominees for the U.S. House of Representatives. Enclosed is a list of candidates whose names will be on your primary election ballot. All of them have received from us forms containing the questions and background information appearing on Pages 3 and 4 of this letter.

Will you please contact the candidates in your own Congressional district? Urge them to complete and return the Committee's questionnaire. Many will disregard our request unless they are prodded by voters in their own geographical areas to announce their positions on compulsory unionism.

Here's what we're counting on you to do to help with *SURVEY '76*:

1) Send the enclosed postcards, or letters containing similar messages, to the candidates,

2) Contact your friends, relatives, business associates and fellow workers and ask them to follow your example,

3) Let us know what action you've taken and then send us copies of replies you receive from candidates, and

4) Send a contribution to the Committee to defray a part of the cost of this survey and the cost of publicizing the survey's results.

Members of the National Right to Work Committee have become a powerful force in the nation's public affairs. That fact was verified by the outcome of the "common situs" battle. If all of us pull together again, we'll break the union bosses' stranglehold on Congress this year.

Thanks for your help and cooperation.

Sincerely,

/s/ A. E. Hare
A. E. HARE
Vice President, Legislation

AEH/eg

Enclosures

[JEB TAB 59c]

1976 QUESTIONNAIRE FOR CANDIDATES

(Congressional candidates in your state have received forms containing the following questions and background information from the National Right to Work Committee.)

1. Do you believe an employee who does not want the "services" of a labor union should be compelled to accept that union as his exclusive representative, as now provided by federal law?

   A union, under present federal laws, is empowered to represent and bind all employees in a company's bargaining unit—including employees who oppose the union and don't want its "services." This monopoly bargaining power, generally described as "exclusive bargaining rights," deprives employees of their right to bargain for themselves. Union officials fought for this power and refuse to give it up; yet they complain they are "unfairly burdened by the legal obligation" to represent non-members. Such complaints are intended to pave the way for compelling support from so-called "free riders" for representation they do not want.

2. Will you support repeal of the provisions in federal laws which authorize compulsory unionism?

   The firing of workers who refuse to pay union dues and/or fees is explicitly sanctioned by both the National Labor Relations Act and the National Railway Labor Act Section 7 of the NLRA, for example, stipulates that employees shall have

"the right to refrain" from participating in union activities *"except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment."* The problem of compulsory unionism was created by Congress. It will not be solved until Congress repeals the existing federal authorizations of compulsory unionism.

3. Do you favor preservation of Section 14(b) of the Taft-Hartley Act?

   In 19 states wage-earners—except those covered by the National Railway Labor Act—are shielded from compulsory unionism by Right to Work laws. The Florida guarantee is typical of these laws, saying, "The right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization." The authority of states to adopt and enforce such laws is reaffirmed by Section 14(b) of the Taft-Hartley amendments to the National Labor Relations Act.

4. Do you favor enactment of 14(b)-type legislation extending the protection of state Right to Work laws to workers governed by the National Railway Labor Act?

   Workers governed by the National Labor Relations Act enjoy the protection of state Right to Work laws. However, that protection is denied employees (primarily airline and railway workers) covered by the National Railway Labor Act. (*See Railway Employees' Department* v. *Hanson*, 351 U.S. 225, 1956)

5. Do you oppose giving officials of construction unions the power to compel union membership through "common situs" picketing?

   Union officals are demanding that Congress authorize "common situs" picketing by construction unions and thereby legalize "secondary boycotts." The problem of compulsory unionism is especially acute in the construction field because only these unions now enjoy unique legal powers to compel membership: 1) seven-day compulsory "union shop" agreements, 2) exclusive union hiring halls, 3) pre-hire agreements, 4) exemption from "hot cargo" bans, etc., etc. In 1975 Congress approved a "common situs" picketing bill, H.R. 5900, which would have allowed one union to halt all work on a construction site when it had a dispute with only one of numerous subcontractors on the site. President Ford vetoed the measure because of intense public opposition.

6. Will you oppose the forced unionization of federal, state county and municipal employees?

   For the past several years Congress has been confronted by bills designed to authorize the forced unionization of public employees at various levels of government. Several of these proposals are aimed at state, county and municipal employees and would nullify the 32 state laws now shielding public employees from union coercion. Other bills would strip postal workers and other federal employees of the freedom of choice guaranteed by the Postal Reorganization Act of 1970 and executive orders dating back to the administration of President John F. Kennedy.

7. Will you oppose the forced unionization of farm workers?

   Agricultural employees are presently exempt from the provisions of federal labor laws. They are the targets of numerous bills (e.g., S. 258 and H.R. 3256 in the present Congress) which would sanction compulsory unionism on farms throughout the country.

8. Will you support new legislation prohibiting the use of compulsory union dues and fees for any kind of partisan political activity?

   Many labor organizations use *forced* union dues and fees for the following purposes:

   a) establishing and funding union political action committees,

   b) paying salaries and expenses of union officials working full time on behalf of union-endorsed candidates,

   c) propagandizing captive union members with regard to candidates through letters, union publications, and union-sponsored radio and television programs,

   d) underwriting costs of raising "voluntary" cash contributions from union members for favored candidates,

   e) conducting partisan voter registration campaigns and "get-out-the-vote" drives, and

   f) reimbursing so-called "volunteer" workers for wages lost while engaging in political activities.

   The political freedom of workers is violated by the use of their money to support candidates they oppose. (*See The Hundred Million Dollar Payoff*, by Douglas Caddy, Arlington House, 1974)

NATIONAL RIGHT TO WORK COMMITTEE
A Coalition of Employees and Employers
REED LARSON, *President*

Dear Montana Right to Work Supporter:

Should the National Right to Work Committee support attempts to establish a state Right to Work organization in Montana?

Several of our Montana supporters have already requested that we do so. But before making any significant commitment, I'd like to know what you think.

In August of 1976 the National Right to Work Committee helped pass a Right to Work law in Louisiana. Earlier this year great progress was made towards Right to Work laws in Idaho and New Mexico.

I believe Montana has good potential for passage of a Right to Work law, if not this year, then perhaps two or three years from now.

Would you be willing to join with other citizens in working towards the passage of a Right to Work law in Montana?

You and I both know that a Right to Work law in Montana would be a good thing for all its citizens. The only question in my mind is when and how we should proceed.

Please let me know what you think.

Sincerely,

/s/ Reed Larson
REED LARSON

P.S. For your convenience, I've enclosed a reply form and business reply envelope.

Please let me hear from you soon so that the National Right to Work Committee will know how to allot its time and resources.

[JEb TAB 59d]

Please Return This Form To:

Mr. Reed Larson
National Right to Work Committee
8316 Arlington Boulevard
Fairfax, Virginia 22038

Dear Mr. Larson:

As a Montanan and a member of the National Right to Work Committee, I think:

☐ The National Right to Work Committee *should* actively support attempts to pass a Right to Work bill in Montana as soon as possible.

☐ The National Right to Work Committee *should not* support attempts to pass a Right to Work bill in Montana in the next two or three years.

☐ I will actively support the efforts of a Montana Right to Work Committee. You can count on me to:

- ☐ Be publicly identified as a member of local Right to Work organization.
- ☐ Make phone calls on behalf of Right to Work.
- ☐ Make door-to-door calls in my neighborhood.
- ☐ Do volunteer office work.

_____
name

_____
address

_____
city, state, zip

My phone number is _____

RIGHT TO WORK NEWS

From the

NATIONAL RIGHT TO WORK COMMITTEE
8316 Arlington Boulevard
Fairfax, Virginia 22030
Telephone: 573-8550
Area Code 703

HOLD FOR 10:00 AM, JANUARY 8, 1976
CONTACT: Herb Berkowitz

Usery Opposed

NEW LABOR SECRETARY SHOULD SUPPORT RIGHT TO WORK

WASHINGTON, DC, January 8, 1976—The National Right to Work Committee told the Ford Administration today that it would use its "every resource" to oppose confirmation of any new labor secretary who favors compulsory unionism.

"The 'common situs' picketing bill which secretary John Dunlop attempted to force down the throats of the American people is proof positive that the public interest cannot be served by a secretary of labor who is wedded to the belief that working men and women should be forced into unwanted unions," executive vice president Reed Larson said.

President Ford vetoed the controversial picketing bill on January 2, amid rumors that secretary Dunlop would resign. Dunlop is expected to announce his decision later this month, after "consulting" with his business and union associates. "In our opinion," Larson said, "he has no other choice; the reaction of the American people to his coercive picketing bill has shown that he is totally out of step with contemporary society."

Dunlop had helped steer the bill through Congress, and had promised union lobbyists that the President would sign it.

The National Right to Work Committee, on the other hand, had fought the bill tooth-and-nail, and has been given credit for generating such grassroots opposition that the President had no other choice but to veto the picketing bill.

In February of last year, the Right to Work organization asked the Senate to reject Dunlop's nomination, predicting at the time that his bias in favor of compulsory unionism would cause him to push legislation subordinating the rights of individual workers to those of professional union organizers.

"Mr. Dunlop's blind-spot was his long-standing devotion to forced union membership; the resulting controversy over his 'situs' bill was inevitable," Larson said.

Larson also said that the appointment of W.J. Usery, Jr., to succeed Dunlop would be "totally unacceptable" to the constituency of the National Right to Work Committee, whose opposition to compulsory unionism is supported by more than two-thirds of the U.S. public. "We will use our every resource to see that such a man does not get into a position to further damage the public interest."

Usery is a former vice president of the giant Machinists union, and has been the subject of much criticism because of his remarks several years ago that Right to Work supporters are "bigots." He has never retracted that remark.

Larson pointed out that nearly seventy percent of the American people oppose compulsory unionism, including about half of all union members.

"Only union officials like George Meany, former union officials like Bill Usery, and a few people like

John Dunlop think that it's okay to bully individuals into unions and fire those who refuse to knuckle under.

"It would be a national disgrace to appoint a secretary of labor dedicated to furthering the selfish interests of the bosses of Big Labor, rather than the interests of all of America's wage-earners. We urge instead, the appointment of a man or woman who would reflect the belief of an overwhelming majority of Americans that union membership should be a matter of individual choice—not coercion."

Established in 1955, the National Right to Work Committee is a single-purpose coalition of citizens who feel all Americans should have the right to get and keep a job regardless of their union membership or non-membership. The Committee has some 700,000 active members and supporters.

#1—M02, M03, M07, M08, M10, M13, K01, K02, K03, K04

[JEB TAB 59e]

HARD HATS AND THEIR FOCAL ROLE

Ford Veto May Bring Escalation Of Demands

By A. H. RASKIN

Construction is a mammoth industry, bigger by far in dollar volume than such pillars of the economy as autos and steel. Even in 1975, when the industry was much harder hit by the recession than business generally, total contracts for private and public building came to almost $130 billion and gave employment to 3.5 million workers.

Yet the industry's corporate structure is dominated by tens of thousands of small employers, much closer in kind to the old "Mom and Pop" grocery store than to the multinationals now in control of most other basic industries. Not surprisingly, with such fragmentation on the management side, labor relations in the building trades have always been something of a mess. Strikes have been frequent, pay settlements have been high and strong local unions have made them higher still by militant interunion one-upmanship.

[Picture Omitted in Printing]

For the past decade a quiet but insistent effort has been under way to inject stability into this chaotic bargaining situation through regional or statewide negotiations and a larger monitorial role for the international unions and the major national associations representing contractors. The chief sponsor of

that effort was John T. Dunlop, the former Harvard dean, who became Secretary of Labor nine months ago.

Until President Ford vetoed the construction labor bill just before Christmas, thus repudiating a promise to sign he had made to the Secretary and the leaders of organized labor, Mr. Dunlop was confident that the capstone was about to be placed on a structure that would contribute importantly to more peaceful and less inflationary bargaining in construction.

When Mr. Dunlop returned to his Belmont, Mass., home the day after the veto to ponder whether to resign in protest, his first call was from a regional vice president of the International Brotherhood of Electrical Workers, who said: "I've been holding my people in line for months, pleading the national interest, urging them to be responsible. Now we're dead and buried. My local people say, 'Let us at 'em.' " A dozen similar calls in quick succession confirmed Mr. Dunlop's belief—expressed even before the President acted—that the veto would mean "unmitigated hell" on the construction strike front in 1976.

That gloomy view is not universally shared, even by some as disappointed as the Secretary over the killing of the bill. But before looking more closely into the measure 's merits and defects, the factors involved in the President's about-face and the probable consequences, it is worth examining some of the elements that have made construction labor relations at once so troublesome and so freighted with both economic and political significance.

The omnipresence of the industry itself, extending as it does into every metropolis, every hamlet and every plant site, makes its operations impossible to ignore. That would be true even if it did not nor-

mally account for one-tenth of the gross national product in direct outlays and provide secondary employment for millions of workers in steel, lumber, cement, transportation and other fields.

Within the labor movement, the building trades unions have always exercised an influence that exceeds their substantial size. They were the acknowledged powerhouse in the old American Federation of Labor; indeed, the formation of the Congress of Industrial Organizations four decades ago was in large measure a rebellion against the craft rigidity, political conservatism and corruption of the construction unions. George Meany, an alumnus of the Plumbers Union, filled the breach in 1955, and internally the building trades have been ascendant ever since.

But for all their strength on the national scene, the parent organizations walked softly in the face of their locals, which tended to be a law unto themselves, especially in New York, Chicago and other highly unionized metropolitan centers. Under pressure from Mr. Meany and the courts, the locals eased some of their monopolistic membership rules and opened their ranks to blacks and other excluded minorities.

In the mid-1960's Mr. Dunlop decided there was need for another type of pressure on the willful building-trades locals. They had come under widespread censure for using their strike power to push hourly wages so high that housing and commercial construction were becoming prohibitively expensive. Equally disturbing to inflation-conscious critics, the runaway pattern of construction settlements was spurring rank-and-file demands in the rest of labor for comparable pay gains.

The Harvard economist felt the situation called for top-level efforts to create a more rational bargaining structure. Though the hard-hats in the building unions have rarely been noted for their hospitality to intellectuals, Professor Dunlop had won both the respect and friendship of the international union presidents through long service as impartial chairman of a labor-management arbitration panel to resolve jurisdictional disputes.

His initial efforts to establish a stabilization apparatus through voluntary action foundered on the rock of local resistance. But after the election of President Nixon in 1968 Mr. Dunlop engineered the formation of a Cabinet-level committee to explore the problem on a more formal basis. It had three things going for it: The Administration's Vietnam policy was highly popular with the construction unions; nonunion construction was beginning to cut into traditional union strongholds, principally because of cost differentials, and public hostility to the inflationary impact of ultra-high contracts was growing.

The result was the issuance by Mr. Nixon nearly a half-year before his 1971 wage-price freeze for the general economy of a special executive order establishing the Construction Industry Stabilization Committee, with Mr. Dunlop as Chairman and Prof. D. Quinn Mills of Massachusetts Institute of Technology as secretary. Its membership included the top echelon of construction labor and management and it did an impressive job of holding the fractious locals in line, even after the economy-wide controls program began to weaken.

Construction settlements, which had averaged 17 percent before the new stabilization machinery, dropped to 11 percent in the turnaround year of 1971,

to 6 percent in 1972 and to 5.3 percent in 1973. With dismantling of the whole controls effort in April 1974 the rate jumped back to 10 percent and it stayed at roughly that level last year. However, the 10 percent national average concealed wide disparities.

One of Secretary Dunlop's first acts after entering the Cabinet last spring was to seek to revive the attempt at wage restraint before all the old abuses returned. He induced President Ford to appoint a new tripartite Collective Bargaining Committee in Construction, with Professor Mills of M.I.T. as chairman.

Out of this group, with Mr. Dunlop himself as chief author, came a proposed law that would authorize a top-level committee of 10 unionists, 10 management representatives and three members representing the public to postpone strikes for 30 days. The panel could also bring national labor organizations and contractor associations into local negotiations.

Beyond these steps toward centralized authority, the new committee would be empowered to recommend new area bargaining structures as well as other measures to enhance productivity, stability and peaceful methods for settling disputes. Had this been the beginning and end of the measure, it almost certainly would have sailed through Congress with minimal conflict. What made it controversial was that it was wedded in the Senate to a quite distinct bill that had been high on construction labor's "must" list for almost 25 years but that had never reached a floor vote in either chamber.

This "common situs" picketing bill would have allowed a building trades local with a grievance against

a single subcontractor to picket all the other contractors on the same construction site. Designed to get around a 1951 Supreme Court ruling that declared such picketing an illegal secondary boycott, the bill's acknowledged purpose was to keep nonunion workers from working alongside union men on projects.

Mr. Meany and the A.F.L.-C.I.O. joined the building trades in making passage of the picketing bill labor's No. 1 priority for 1975, a test for a Congress in which a heavy majority of both houses had been elected with union support. Even before the measure came to the House of Representatives for a vote last summer, the President made it known that he would sign it if it contained provisions requiring the parent union to approve a local's request to picket and also if it were linked to the Dunlop bargaining bill. Both conditions were met in the final package, along with a good many others aimed at overcoming objections to the extension of picketing rights.

But none of these modifications softened the tide of denunciations that swept over the White House after the bill cleared Capitol Hill under the combined shepherding of the Labor Secretary and the labor lobby. The United States Chamber of Commerce and most contractor organizations opposed the measure, but the great bulk of the letters and postcards that cascaded into the President's office reflected a campaign by the National Right to Work Committee, a long-time crusader against all forms of the union shop.

In the end, however, what perhaps did most to cause the Ford reversal on signing the bill was a radio speech by his principal rival for the 1976 Republican nomination, Ronald Reagan: The former California governor condemned the bill as a threat to the livelihood of workers who did not want to join

unions and to the health of the American economy. After that, Secretary Dunlop's increasingly urgent pleas to the President to stand by his commitment got nowhere.

Among the questions arising from the veto was the tenure of Mr. Dunlop, who made no secret of his conviction that his long effort to foster labor-management stability in construction through upper-echelon monitoring was "down the drain."

He noted that for the past five or six years all the key international officers have sought to "hold things down" in the national interest. Even with that, the busy industrial area around Beaumont, Tex., was shut down by a 200-day strike last year and Washington, D.C., had a strike almost that long. Now he feels similar explosions will be wide-spread, with no effort by the parent unions to assert a moderating influence.

J. Curtis Counts, former director of the Federal Mediation and Conciliation Service, who now heads the association representing all unionized contractors, is more sanguine about rebuilding some spirit of rationality. "Realistically," he said, "I believe you'll have an initial period of upset and turmoil. But, for all the emotion, the labor leaders in this industry are increasingly realistic and responsible. I don't think that, even at the local level, they are going to take positions that don't make sense."

One restraining factor mentioned by other industry spokesmen is the danger of an even more rapid spread of nonunion construction if strikes multiply and costs skyrocket. No accurate statistics exist on how much work is now done nonunion, but a recent University of Pennsylvania study estimated that the total might be in excess of 50 percent.

Still another possible curb on strikes is the Business Roundtable, made up of the chief executives of 158 large industrial corporations. It came into being in 1970, under the leadership of Roger Blough, as the Construction Users Anti-Inflation Roundtable. Its original purpose was to halt the swift escalation of building costs on new factories, offices, petro-chemical plants, utilities and steel mills—an endeavor in which it got considerable help from Professor Dunlop.

No encouragement for hopes of modernization is coming from the labor side as the New Year opens. Robert A. Georgine, president of the Building and Construction Trades Department, calls the Ford veto a "national tragedy" and says it eliminates hope for stabilizing the industry. Both he and Mr. Meany describe the President's act as a breach of faith that has irrevocably destroyed labor's respect for him.

The expectation among most observers is that it will result in a boycott by Mr. Meany and other top unionists of the President's Labor-Management Committee, but even if they stay Administration officials acknowledge that the group will have lost its value as a forum.

"The one thing George Meany can never abide is a man who goes back on his word," says a Meany aid. "The stakes are now much bigger than construction."

Press Intelligence, Inc.
Washington, D.C. 20001

ELKHART, INDIANA
TRUTH

E—29,691

CONSTRUCTION PICKETING BILL GIVES FORD DIFFICULT CHOICE

WASHINGTON (UPI)—An obscure, well-worn issue with a funny Latin name now poses a costly political dilemma for President Ford.

Faced with losing the support of some conservative Republicans or the loyalty of a cabinet officer, Ford soon must decide whether to sign or veto a bill on "common situs picketing."

The bill would allow a trade union to picket and shut down an entire construction site even though its quarrel may be with only one subcontractor on the site. At the present time a building trade union must confine its picketing to the subcontractor with which it has a dispute, but other construction work may continue.

"The very title of this problem seems to cause a lot of people pain." Labor Secretary John Dunlop said Wednesday.

Dunlop, a respected Harvard economist with years of experience in construction industry labor relations, has done nothing to squelch speculation that a presidential veto would bring his resignation.

Having fashioned a union-management compromise on the bill by promising that Ford would sign it, Dunlop says construction industry negotiating in 1976 will be "unmitigated hell" if it is vetoed.

Opponents of the measure—including a long list of White House advisers, Republican politicans, business

organizations and right-to-work groups—insist instead it will cause strikes and cost Ford the conservative vote in 1976.

The President will pay a political price no matter how he decides. Those involved in the dispute explain it this way:

Ford's signature on the bill would firm up the support he enjoys among construction workers but force many conservative businessmen to turn to GOP challenger Ronald Reagan, who opposes the bill.

A veto will appease some conservatives but risk a Dunlop resignation and force the building trades unions to follow through on a threat to "actively work against" Ford.

The unions insist Ford should sign it because, as AFL-CIO Building Trades President Robert Georgine says, he can never appease conservatives who would rather have Reagan in the White House. The conservatives reply that Ford should veto it because his support among construction workers is weak.

All agree the victor ultimately will be the right-to-work movement, which has gained new vigor and support as a result of the battle.

The bill has passed Congress but in order to prevent a pocket veto it probably won't be sent to Ford until after Congress' Christmas recess.

The issue known as "common situs picketing" plagued politicians since the time Ford first was elected to public office. It stems from a precedent-setting Supreme Court ruling that Denver craft union pickets illegally shut down an entire construction site in 1949 in a dispute with one subcontractor who was paying less than union scale.

Although the building trades unions have been trying to reverse that principle ever since. Congress continually spurned the bill until Dunlop eased the

way in August by drafting a companion measure to stabilize contract bargaining in the industry.

Dunlop also managed to convince Congress the construction industry, beleagured by the recession, high labor costs and 20 per cent unemployment needs such a law.

RTW Actiongram

NATIONAL RIGHT TO WORK COMMITTEE
8316 Arlington Boulevard
Suite 600
Fairfax, Virginia 22030
Telephone (703) 573-8550

February 6, 1978

Dear Missouri Right to Work Committee Member:

Your help is urgently needed.

Your hard work last year stopped a bill in the Missouri House that would have forced all of your public employees to pay dues to a union or be fired!

But the union lobbyists are back in force this year with a scheme that they think will slip by Missouri citizens. And they are more determined than ever to get their way.

They've succeeded in getting their puppets in the House Labor Committee to combine three new bills—HB 998, HB 1135, and HB 1261.

The committee *held public hearings on only one of these.*

Then, in an obvious move to bypass any opposition, the House Labor Committee combined the three bills into one in a *closed executive session.*

This combined committee substitute, HB 998/1135/1261, would destroy the freedom of choice of virtually all Missouri public employees.

It's compulsory unionism. The substitute bill gives union officials the so-called "agency shop." That means that every public employee in Missouri would have to pay union dues or be fired!

What's more, this combined bill will expand compulsory monopoly representation in Missouri—forc-

ing public employees to accept a union they don't want and didn't vote for as their exclusive representative. They wouldn't even be able to talk to their employer on their own behalf.

It's wrong and it *must* be defeated.

Just like last year, you can stop them again—but only if you act right away.

Here's what you can do to help:

1. Send the enclosed postcard to your representative today, or write him a personal letter. (See the enclosed list of representatives.)
   Remind your representative that the outcry against public employee forced unionism killed the bill last year, and let him know that concerned citizens are not going to stand still this year!
2. Contact your friends, relatives, business associates, and fellow workers. Ask them to write to their representatives, too.
3. Send us copies of your letters and any replies you receive.

Big Labor's lobbyists have a steamroller behind this combined scheme, so we can't delay.

Sincerely,

/s/ Andrew E. Hare
ANDREW E. HARE
Vice President, Legislation

P.S. Union lobbyists think they have the skids greased to pass combined HB 998/1135/1261. Let's show them that the voice of the people *will* be heard in the Missouri legislature!

[JEB TAB 59f]

"THEY TRIED BEFORE"

The Express & News
Kirksville, Missouri

COMPULSORY UNIONISM AGAIN ISSUE IN PUBLIC EMPLOYE BARGAINING BILL

Missouri public employees again are facing serious compulsory unionization attempts as labor union professionals renew their pressure on state legislators.

This warning was contained in a letter sent this week to members of the state legislature by Gene Mittelberg, Executive Vice President of Missourians for Right to Work.

Mittelberg urged legislators to resist all proposals that restrict the individuals freedom of choice. He was referring specifically to House Bill 343, which has now been reported out of committee and ready for floor debate. Similar to a bill rejected last year, it is designed to establish mandatory collective bargaining and sanction the forced collection of so-called "Service Fees" from public employees, including school teachers.

"It is loaded with the same objectionable features the salaried union professionals have promoted in the past," Mittelberg said.

"This is compulsory unionism, by any name," Mittelberg continued. "Call it Agency Shop, Union Security, Service Fee, whatever . . . The employee on the public payroll still could be compelled to financially support a private organization in order to hold a job with any agency of government. Refuse to pay, and you're fired."

Mittelberg pointed out that provisions in the bill deny "either individuals or groups, other than the

monopoly union representative, any effective means to negotiate, meet, or confer with the public employer for determining their own employment conditions."

He called attention to testimony given Feb. 4 before the House Labor Committee by Ms. Shirley Schaaf, a member of the Missouri State Teachers Association Legislative Committee. Ms. Schaaf reported that public school teachers throughout the state were protesting the bill's abusive power to restrict the individuals freedom of choice.

Mittelberg pointed out that the logic of the teachers plea could well apply to all segments of public employment.

Other measures that have been recently introduced include House Bill 423, Senate Bills 195 and 197, and Senate Joint Resolution 9. All relate to public employee bargaining in one form or another and could be expected to follow usual union demand for some type of compulsory union dues or fees, according to Mittelberg.

The Post-Tribune
The News & Tribune
Jefferson City, Missouri

BILL SAID TO BE 'PUBLIC RIPOFF'

JEFFERSON CITY, Mo. (AP)—The National Right to Work Committee has called a public employes collective bargaining bill pending in the Missouri House "a gigantic public ripoff" because it would permit mandatory payment of union dues by all workers.

In a statement released by Committee Vice President Charles W. Bailey, the organization contended provisions of the bill would allow a substantial portion of tax dollars to wind up in union treasuries.

The measure, which has gained approval of the House Labor Committee and could receive initial consideration this week, authorizes a public employee bargaining unit to obtain a mandatory payroll deduction equal to dues paid by its regular members from salaries of workers that are represented by the unit but do not officially belong to it.

The "agency shop" provision would require approval by a majority of the union members.

"The national committee supports the right of every citizen, including public employees, to join a union but doesn't feel anyone should be forced to do so in order to get or keep a job," Bailey said in his statement.

He noted that Missouri is one of 34 states which does not allow the agency shop for public workers and urged taxpayers to seek defeat of the House measure.

In an agency shop, the bargaining unit negotiates for all workers whether they are members or not and

receives the equivalent of union dues from nonmembers to support its operations.

The bill, which exempts deputy sheriffs, Missouri highway patrolmen and members of the state National Guard from its provisions, also includes a no-strike clause. It would cover approximately a quarter million public workers.

* * * *

[Cartoons Omitted in Printing]

* * * *

xw. The following is one of the renewal packages reproduced at JEB tab 40:

EXHIBIT D

NATIONAL RIGHT TO WORK COMMITTEE

A Coalition of Employees and Employers

REED LARSON, *Executive Vice President*

I really wish it were possible to spend some time with you and all of our loyal members to personally express my gratitude for your steadfast support of Right to Work.

With your financial assistance and active participation, we've won a truly remarkable string of victories this past year—capped by our dramatic defeat of the situs bill.

Now, as we begin a new year, I'm writing to send your 1976 Membership Card and ask for your all-out support in this critical election year.

On behalf of our officers and Board of Directors, I'd like to say that we truly appreciate the contribution you made this past year in support of individual freedom and in opposition to forced unionism.

But you and I know the union bosses aren't going to fall over and play dead just because we whipped them in 1975.

That's why I'm looking forward to your membership acceptance so we can acknowledge your 1976 support and finalize our legislative plans. Please return the enclosed reply form today with your maximum contribution.

I'll be anxiously watching the mail for your response.

Sincerely,

/s/ Reed Larson

REED LARSON

1976 MEMBERSHIP CARD

$2.00 of your contribution covers an annual subscription to the monthly National Right to Work Newsletter.

THE NATIONAL RIGHT TO WORK COMMITTEE

This is to certify that . . . .

is an active member of

THE NATIONAL RIGHT TO WORK COMMITTEE
8316 Arlington Boulevard
Suite 600
Fairfax, Va. 22030

Dear Mr. Larson:

—— Yes, I am pleased to renew my membership. I acknowledge receipt of my 1976 membership card. I'm enclosing my maximum contribution of $———.

—— No, I regret that I'm unable to accept active membership now, but I want to continue to receive the Right to Work NEWSLETTER and support your vital work with a special contribution of $———.

-x. Witness I brought the following renewal letter he received, with attachment and a cancelled check, to his deposition:

NATIONAL RIGHT TO WORK COMMITTEE

A Coalition of Employees and Employers
REED LARSON, *President*

May 5, 1978

I'm writing you today because I suspect you may have overlooked my letter of March 15, 1978 reminding you that it's time to renew your membership in the National Right to Work Committee.

As I'm sure you know, this past year was extremely successful—thanks to you.

In fact, because of your efforts and the efforts of thousands of other Right to Work supporters across America, your Committee is now recognized as one of the most effective organizations in the Washington area.

But despite our successes, we still face stern challenges ahead.

The 95th Congress is clearly controlled by politicians who owe their elections to the union bosses. And, of course, we can no longer depend on Presidential vetoes.

Please then, can I count on you to renew your Committee membership? For your convenience, I'm enclosing a memo invoice made out for the same amount you gave a year ago. I truly hope you will take a moment now to send in your check for $100.00, $150.00 or whatever you can.

Thanks again for your interest and support.

Sincerely,

/s/ Reed Larson
REED LARSON

P.S. If our letters crossed in the mail and you have already renewed your membership, please disregard this letter.

* * * *

[Check Omitted in Printing]

xbb. The following is the letter reproduced at JEB tab 39:

NATIONAL RIGHT TO WORK COMMITTEE

Coalition of Employees and Employers
Headquarters at the Nation's Capital

Dear

Reed Larson passed your recent note on to me and asked that I thank you for taking the time to write and for your support of Right to Work.

I must apologize for the renewal notice which you received with your name incorrectly spelled. When I checked our files, I found that you were listed twice and that your name was misspelled under one listing. Our records have now been corrected so that you appear only under your correct name.

Although this change will take a few weeks to appear on our records, please be assured that it has been made.

In your note, you mentioned that you do not wish to be a "member" of the Committee. As you may know, membership does not in any way obligate you to future actions or contributions. However, it does entitle you to receive our monthly Newsletter, as well as special action mailings concerning events in your state or in the U.S. Congress.

The main purpose of the Committee is to fight compulsory unionism on every level, and our greatest strength is having thousands of members willing to contact public officials at both the national and the state level. Legislators react best to direct pressure from their constituents.

If you want, we can remove your name from our membership rolls. However, the strength of our organization is concerned citizens, like you, and our ultimate success will depend on keeping you informed.

We hope you will want to remain on our membership roll, thus receiving the Newsletter and special mailings—again, with the understanding that membership does not commit you to any future action or contribution.

Many thanks for being a part of the fight against compulsory unionism. With your continuing help and support, we are confident that we will move forward.

Sincerely,

Henry L. Walther
Director of Membership Services

HLW/dg
Encl.

P.S. I am enclosing a form on which you can indicate your preference concerning membership. Also enclosed is a return envelope, for your convenience.

* * * *

x132. That portion of the minutes reads as follows:

> "Mr. Elder reviewed the contents of a booklet featuring samples of letters and pamphlets circulated by the membership department to members and prospective members and also letters and pamphlets prepared for one of the Committee's chapters, Florida Citizens for Right to Work. He also reported that 10,600 new Committee members had been enrolled during the past year, that gain having been offset in part by members who failed to continue support of the organization." (JEB tab 41.)

* * * *

x134. That portion of the minutes reads as follows:

> "The Chairman introduced Mr. Larson to present the Committee's annual financial report. Mr. Larson invited the Directors' attention to copies of the 1972 audit in their agenda books, and he emphasized that the Committee ended the past year in a strong financial position. A surplus of $58,000 enabled the Committee to increase its contingency reserve to approximately $300,000. In response to a question by Mr. Harrod, Mr. Larson stated that the Committee now has approximately 21,000 dues-paying members —an increase of about 6,000 since 1969. He also remarked that the average annual contribution to the Committee is under $50 and that the dollar rate of renewal is approximately 80 percent. Approving a motion made by Mr. Harrod and seconded by Mr. Gibson, the Board accepted the financial report." (JEB tab 42.)

* * * *

x136. That portion of the minutes reads as follows:

> "Mr. Hamilton stated that the Committee obtained $1 million last year from 25,000 contributing members and that revenue from new members was 16% higher than the projected amount. He commended Mr. Lomason and Mr. Kellar for their service on a special finance committee and also praised his associate, Mr. Elder, and the membership department's supervisor and employees." (JEB tab 43.)

-137. Portions of the minutes of other Board of Directors and Executive Committee meetings, that refer to NRWC's membership program and that were produced in response to the FEC's Request for Production of Documents (First Set), are attached hereto as Exhibit U. The corresponding full minutes are found at JEB tabs 57 and 58.

* * * *

x140. That portion of the Report to the Board of Membership Program reads as follows:

> "We're glad to report at this time that the Committee's expansion program has, thus far, been even more successful than projected. As of April 30 it has added approximately 60,000 new supporters to the Committee's rolls since January 1, 31,025 of whom are financial contributors. New supporters, about half of whom are contributors, are currently coming in at a rate of 15,000 per week. As we gain experience with the currently mailing program and obtain test results of additional proven lists, the volume of solicitations mailed continues to increase. On Monday and Tuesday of this week, for example, we added

2,982 new contributors and believe we can confidently expect a total of approximately 25,000 new contributors for May, bringing the total dollar receipts in new support to approximately $800,000 by the end of the first five months of the year.

"In addition, the educational value of mailing some 3,000,000 letters throughout America has had a very pronounced effect on the legislative climate, both nationally and at the state level. Tens of thousands of citizens, alerted through this mailing program, have contacted members of Congress and state legislators, protesting legislative proposals aimed at expanding compulsory unionism." (JEB tab 44.)

* * * *

148c. Witness A believes that "NRWC attempts 'to protect people that want to work and not help the people who don't want to work, something like that." (p. 10). Witness A believes he has been requested by NRWC to renew his membership four maybe five times a year and Witness A believes he has renewed his membership in NRWC (p. 18). Witness A has never returned his membership card to NRWC (p. 19.) On cross-examination, Witness A testified to his beliefs as follows:

"Q. Now, is it your understanding that the Right To Work Committee and those other groups we're talking about are interested in preserving the right of employees to work without joining a union? Is that your understanding?

"A. I think that's part of it.

"Q. Do you believe in that?

"A. Yes, sir.

"Q. And have you actively supported that right for employees to work without paying tribute to a union; is that right?

"A. Right, yes.

"Q. So, have you been interested in this type of activity since you first learned of the Right to Work Committee?

"A. Yes, sir.

"Q. And have you always felt that you were a member and a part of these organizations?

"A. Yes.

"Q. And you still feel that no person should be forced to join a union or pay tribute to a union to hold a job?

"A. Right, shouldn't be forced.

"Q. And you've been willing to contribute your funds for that purpose, right?

"A. Yes, sir." (pp. 27-28).

-148d. The following is part of the direct examination of Witness A by the FEC:

"Q. Do you normally receive requests from organizations for contributions?

"A. Oh, yes.

"Q. And what sort of organization might those be?

"A. Oh, gosh, I don't know. I really can't name any.

"Q. Are they generally political organizations or civic organizations?

"A. Well, the main thing I get is people running for office, they want the money. That's where I spend the most, politicians.

"Q. How often would you say you contribute to other organizations?

"A. Other organizations? Well, I'd have to get Mama to get out her book and read them. I really can't remember how many or entirely what—of course, church, you know. Boys' camp, or what do they call things like that?

"Q. How often would you receive requests from these other organizations?

"A. Only once a year normally." (p. 14).

* * * *

-149d. The following is part of the direct examination of Witness B by the FEC:

"Q. Do you normally receive requests from other organizations for contributions?

"A. Yes.

"Q. What type of organizations might those be?

"MR. CANTER: I'd like to object to that question. That question's highly irrelevant and has no basis, whatsoever, of any connection with the instant case.

"Q. (By Ms. Bak) Okay, I'm gonna ask you to answer that question.

"A. Yeah. You mean what type of organizations?

"Q. Uh-huh.

"A. I get for political, from religious. Political and religious. Well, for fraternal.

"MR. CANTER: If you think the questions are intruding upon your privacy, you don't have to answer that question as to the identity of the organizations." (p. 17).

* * * *

-151d. The following is part of the direct examination of Witness D by the FEC:

"Q. Do you normally receive requests from organizations for contributions?

"A. Hundreds of them.

"Q. Can you tell me what type of organizations these are?

"MR. CANTER: I object to that question, totally irrelevant and an intrusion into the privacy of the witness. Now, you may answer the question, if you feel you want to.

"Q. [Witness D], I will let the question stand. You may answer it.

"A. May I hear the question again?

"Q. What types of organizations are there that —you have said that you contribute to many organizations, and what types are there?

"A. Yes, I would prefer not to answer that question." (p. 15).

* * * *

-154d. The following is part of the direct examination of Witness G by the FEC:

"Q. Are your contributions always in response to a request for a contribution from the National Right to Work Committee?

"A. I imagine it is.

"Q. Do you normally receive requests from other organizations for similar contributions?

"A. Every day. I contributed to the American Security Council. In fact, I got a letter yesterday asking for a contribution from the American Security Council." (p. 17-18).

* * * *

-155d. The following is part of the direct examination of Witness H by the FEC:

"Q. Do you normally receive requests from organizations for contributions?

"A. Yes, I do.

"Q. How often would you say that you receive such solicitations?

"A. Well, I would say four or five times a week.

"Q. Can you tell me what types of organizations they are?

"MR. CANTER: I'd like to object to that question as being totally irrelevant and obnoxious and an unnecessary intrusion to the witness's privacy." (pp. 18-19).

* * * *

-156d. The following is part of the direct examination of Witness I by the FEC:

"Q. BY MS. BAK: [Witness I], do you normally receive requests from organizations for contributions?

"A. Oh, boy. don't know how many lists a month. It's entirely too many.

"Q. Could you tell me how often you might receive such requests?

"A. Daily.

"Q. And can you describe what sort of organizations they are?

"MR. CANTER: Objection. This, again, is a warrantless intrusion of the witness's privacy.

"MR. McAULIFFE: Are you talking about organizations on whose mailing list [Witness I] appears?

"Q. BY MS. BAK: Who ask him for contributions.

"A. You mean can I tell you how many?

"Q. Can you tell me what types of organizations they are?

"A. Well, colleges, high schools, private schools, Boy Scouts, YMCA. Of course, among others National Right to Work Committee. The—let's see, how many charities, Little Sisters of the Poor, how do you classify them? Anyway, Little Sisters of the Poor is one of my favorite charities.

"MR. McAULIFFE: Let me caution you, this question only asks for people that ask you for contributions. Confine your answer to that.

"A. That's right, yeah. Well, so far I'm all right, but there should be some more classifications. Museums, I left out museums, Metropolitan Museum, Smithsonian, Arizona Historical Foundation, California Science—Academy of Science, I mean. Those are just a few. That should give you an indication of the type of thing.

"Q. BY MS. BAK: Do you usually contribute to organizations such as these that ask for a contribution?

"MR. McAULIFFE: Objection. I will instruct [Witness I] not to answer that question. It goes beyond this lawsuit and also intrudes into his association." (pp. 25-26).

* * * *

-157d. The following is part of the direct examination of Witness J by the FEC:

"Q. Would you describe most of the organizations that you are on the lists for as conservative organizations or liberal organizations.

"A. In the true sense of the word, liberal, which you people have misused. When I say, 'you people,' I am talking about the educational establishment and journalistic establishment which has consistently taken the word, 'liberal,' which was a good word and turned it upside down. I am a true liberal; I consider myself, and have supported organizations that believe in freedom.

"Q. And most of the requests you get are for those types of organizations?

"MS. HAKOLA: This is irrelevant. I object. We are not representing the witness, but I want to note we are putting in time which is being paid for by the National Right to Work Committee, and this type of question is simply out of order." (p. 26.)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 77-2175

FEDERAL ELECTION COMMISSION, PLAINTIFF

v.

NATIONAL RIGHT TO WORK COMMITTEE, ET AL., DEFENDANTS

Civil Action No. 78-0315

NATIONAL RIGHT TO WORK COMMITTEE, ET AL., PLAINTIFF

v.

FEDERAL ELECTION COMMISSION, ET AL., DEFENDANTS

FEDERAL ELECTION COMMISSION'S RESPONSE TO NATIONAL RIGHT TO WORK COMMITTEE'S AND EMPLOYEE RIGHTS CAMPAIGN COMMITTEE'S LOCAL RULE 1-9(h) STATEMENT

INTRODUCTION

On August 31, 1979, the parties to this action, the Federal Election Commission ("Commission"), the National Right to Work Committee ("NRWC") and the Employee Rights Campaign Committee ("ERCC") filed cross motions for summary judgment. Along with these motions, each party, pursuant to Rule 1-9(h) of the Local Rules of the United States District Court for the District of Columbia, was supposed to file a statement of material fact as to which they believed there exists no genuine issue

or dispute but to which the parties had been unable to stipulate. This filing constitutes the Commission's response to the document NRWC and ERCC have filed purporting to comply with the requirements of Local Rule 1-9(h).

I. DEFENDANTS HAVE FAILED TO FILE A PROPER LOCAL RULE 1-9(h) STATEMENT OF MATERIAL FACTS AS TO WHICH THEY BELIEVE THERE IS NO GENUINE ISSUE OR DISPUTE.

Defendants filed a 176 page document purporting to be a Local Rule 1-9(h) statement of material facts as to which they believe there is no genuine issue or dispute. Needlessly, this document consists of statements already submitted by the parties as their Joint Stipulation of Facts. In addition, new facts never raised in the course of the parties' stipulation are interspersed with transcriptions of documents which were already included in the three volume Joint Exhibit Binder of the parties, photocopies of documents included in that same joint binder of exhibits, and facts to which the parties were unable to stipulate in the course of their many meetings. The 176 page filing defendants have submitted to the Commission and this court is clearly contrary to the intent of Local Rule 1-9(h) which is directed toward providing the court and parties involved in the litigation with a succinct and distilled statement of only those material facts as to which each party believed there exists no genuine issue or dispute.

The Commission believes that defendants have done the court and the public a disservice in submitting this needlessly repetitive document and that they have totally ignored the purpose of the stipulation process which went on for nearly one month. In

addition, virtually all of defendants' new assertions are irrelevant, as discussed below. Therefore, the court is urged to ignore defendants' Rule 1-9(h) Statement and refer to the joint stipulation of facts already submitted by the parties.

At the outset, it should also be noted that the Commission staff has had to spend many hours sifting through material already agreed to and presented to the court to find those statements of fact contained in defendants' statement to which the Commission feels it must respond. In the course of this arduous process, the Commission has found it impossible to answer defendants NRWC's and ERCC's 1-9(h) Statement in the usual, in seriatum, fashion. The Commission has not, for example, conducted a line-by-line check of the accuracy of the transcriptions of documents already provided to this court in the three volume Joint Exhibit Binder of the parties.[1] As a result, the Commission respectfully urges that the court ignore defendants' transcriptions of those documents already submitted jointly by the parties and refer only to the originals of the documents as presented in the Joint Exhibit Binders of the parties. In addition, the Commission has found it simply impossible to respond to a number of defendants' statements which relate in no way to material facts going to legal or factual issues raised in this case. See, e.g., defendants' statement #137.

The Commission will, therefore, attempt to respond to defendants' statement of material fact about

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[1] A cursory review of the transcriptions of these documents has revealed, for example, that with respect to statement 54 of defendants' 1-9(h) Statement, defendants have omitted all portions of the General Counsel's Report referring to co-respondent Public Service Research Council, thus presenting an incomplete transcription of this document.

which they believe there exists no genuine issue in the only manner possible; by addressing categories of issues raised by defendants' statements. Should, however, the Court find this manner of response to be lacking in either clarity or completeness, the Commission respectfully requests that the Court order defendants to submit a proper 1-9(h) Statement, so that the Commission might properly respond.

* * * *

E. *Membership*

With respect to defendants' statements 121 and 122 the Commission believes it irrelevant whether NRWC has been labeling certain individuals as members of NRWC since 1955. The central issue in this litigation is whether NRWC has "members" pursuant to § 441b(b)(4)(C) of the Federal Election Campaign Act. However, defendants' assertion that "the President of NRWC, in conjunction and in accord with the NRWC Board of Directors, establishes the criteria governing membership in NRWC" is controverted by the Joint Exhibit Binder of the parties, Exhibit Tabs 1, 2, 3, 57, and 58 which show that the alleged "requirements" neither exist in written form among any of NRWC's corporate papers, nor are they referred to in any minutes of the meetings of the Board of Directors or Executive Committee of NRWC. Nevertheless, even if true, it is clearly irrelevant that criteria for membership in NRWC are established by the President of the corporation since no "member" or prospective member is ever told of what those criteria consists. Clearly, one can only comply with "requirements" for purposes of establishing voluntary association when one is aware that requirements in fact exist and of what those requirements consist.

Finally, in response to defendants' contention that since 1960 and in all succeeding years NRWC has adhered to the same general standards for according membership status to persons, the Commission refers the Court to the deposition of Mr. Theodore Hamilton at p. 11, 22, 26, 31. Mr. Hamilton has worked with NRWC in the area of membership development since 1959. In fact, until 1974 he was responsible for the operation of NRWC's membership division. Mr. Hamilton testified that he was not aware of any classes of membership in NRWC prior to 1974 or in his work with the membership division of NRWC since 1974 through the present. Mr. Hamilton also indicated that at no time during his work with NRWC was he aware of the corporation's standards or criteria for membership.

Respectfully submitted,

/s/ William C. Oldaker (by C.N.S.)
WILLIAM C. OLDAKER
General Counsel

/s/ Charles N. Steele
CHARLES N. STEELE
Associate General Counsel

/s/ Lawrence M. Noble (by P.F.B.)
LAWRENCE M. NOBLE
Assistant General Counsel

/s/ Patricia F. Bak
PATRICIA F. BAK
Attorney

FEDERAL ELECTION COMMISSION
1325 K Street, N.W.
Washington, D.C. 20463
(202) 523-4039

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
Washington, D.C. 20543

April 5, 1982

Charles N. Steele, Esq.
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

RE: Federal Election Commission, et al. v. National Right to Work Committee, et al., No. 81-1506

Dear Mr. Steele:

The Court today took the following action in the above case:

"The petition for a writ of certiorari is granted."

Enclosed are memorandums describing the time requirements and procedures under the rules.

I have been instructed to inform you that Rule 34(a) is satisfied by having the initial sheet in the brief state the "Questions Presented" without more. Counsel should not have printed on this page the title of the case or any other descriptive matter. A sample sheet is enclosed.

Very truly yours,

ALEXANDER L. STEVAS
Clerk

By /s/ June M. Hoffmann
(Miss) JUNE M. HOFFMANN
Assistant Clerk

Enclosures

☆ U. S. GOVERNMENT PRINTING OFFICE: 1982 378865 893

Opposition

Office - Supreme Court, U.S.
FILED
MAR 12 1982
ALEXANDER L. STEVAS

No. 81-1506

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

FEDERAL ELECTION COMMISSION, *et al.*,
Petitioners,

v.

NATIONAL RIGHT TO WORK COMMITTEE, *et al.*,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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COUNTERSTATEMENT OF QUESTION PRESENTED

Whether the court of appeals was correct in holding that the National Right to Work Committee, a non-stock, not-for-profit corporation, may solicit its members, who share the Committee's philosophy of voluntary unionism and who have evidenced a willingness to promote that philosophy through support of the Committee, for political contributions in accordance with 2 U.S.C. § 441b(b)(4)(C) of the Federal Election Campaign Act of 1971, as amended.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

No. 81-1506

FEDERAL ELECTION COMMISSION, *et al.*,

Petitioners,

v.

NATIONAL RIGHT TO WORK COMMITTEE, *et al.*,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

The National Right to Work Committee ("NRWC" or "Committee") and other co-respondents respectfully oppose the petition for a *writ of certiorari* to review the judgment of the United States Court of Appeals for the District of Columbia Circuit in *National Right to Work Committee, et al.* v. *Federal Election Commission, et al.*, 665 F.2d 371 (D.C. Cir., 1981).

COUNTERSTATEMENT OF THE CASE

Background

NRWC is a nonprofit, social welfare organization without capital stock, exempt from Federal income taxation under § 501(c)(4) of the Internal Revenue Code. 26 U.S.C. § 501(c)(4). It has approximately 1.5 million members. NRWC was formed to educate the public on and to advocate voluntary unionism. To this end, NRWC conducts a continuous

and extensive program of advocacy through the dissemination of information on compulsory unionism to its members and to the general public.

The Employee Rights Campaign Committee ("ERCC") is NRWC's separate segregated political fund organized pursuant to 2 U.S.C. § 441b(b)(2)(C).

NRWC was first founded in 1955 and first incorporated in 1960. NRWC re-incorporated in 1975 in Virginia, and for purposes of state law, its Virginia Articles of Incorporation state that it shall not have members. At least as early as 1960, NRWC recognized members and granted them privileges and it continues to do so.

On January 6, 1976, ERCC requested an advisory opinion from the FEC to determine whether NRWC and ERCC could lawfully solicit NRWC's members for contributions to ERCC. On three occasions in 1976, the first occurring on May 7, 1976, ERCC mailed solicitations to members of NRWC. On April 14, 1978 — after a delay of two years and two months — the FEC issued an adverse advisory opinion in response to ERCC's request.

The FEC and NRWC have stipulated that NRWC maintains standards that are applied by NRWC to determine when a person is considered a member.

These standards, which are established by the president in accord with the Board of Directors, are as follows: a person must receive an initial NRWC mailing that describes abuses of compulsory unionism and requests that the recipient join in opposing such abuses; that person must complete an enclosed survey questionnaire in accordance with NRWC criteria and return the questionnaire to NRWC; the questionnaire asks the recipient's views on issues of public policy related to compulsory unionism; those who answer the questionnaire in accordance with NRWC criteria are sent supporting membership

cards; those who, in addition, send a contribution are sent an active membership card; thereafter, NRWC considers such persons to be members until notified to the contrary; members are sent renewal notices on the approximate anniversary of the initial date of membership.

NRWC sends its members monthly newsletters, periodic reports, and special action reports, detailing NRWC's current activities and asking the members to take legislative action efforts. NRWC's membership mailings are the medium through which NRWC keeps its members informed and active.

The solicitation material used by NRWC and ERCC in 1976, which underlies the case at bar, was sent *solely* to NRWC's members, not to the general public.

REASONS WHY THE WRIT SHOULD NOT ISSUE

The Court Of Appeals Has Properly Decided A Question Of The Application Of A Federal Statute To An Individual Organization

This Court should not issue the writ as requested by the petitioners because the court of appeals has simply applied the plain language of 2 U.S.C. § 441b(b)(4)(C)[1] consistently with a long line of First Amendment decisions of this Court to determine whether NRWC may solicit its members for contributions to ERCC.[2] The decision of the court of appeals does

---

[1] 2 U.S.C. § 441b makes corporate expenditures or contributions in connection with elections to specified Federal offices illegal, and it sets forth the exceptions to this general rule. Section 441b(b)(4)(C), which is at issue in this case, provides:

> (C) This paragraph shall not prevent a membership organization, cooperative or corporation without capital stock, or a separate segregated fund established by a membership organization, cooperative, or corporation without capital stock, from soliciting contributions to such a fund from members of such organization, cooperative, or corporation without capital stock.

[2] This case does not present any issue concerning corporate political contributions; only individuals contribute to ERCC.

not change the existing law as it is written or as it is properly applied. [3]

The FEC's regulatory definition of "members" adopts as the test the standards for membership established by the organization itself, with the caveat that membership requirements must not consist solely of the requirement that one contribute to the separate segregated fund. [4] Yet, despite the seemingly broad definition embodied by the regulations, an organization cannot be certain that its established criteria satisfy the FEC's interpretation of the statute and regulations, as evidenced by this action in which the FEC contends that NRWC's members, who satisfy NRWC's requirements for membership, are not "members" under the Act. [5]

---

[3] The court of appeals correctly noted that the issue presented is quite narrow:

> By focusing on the general proscription rather than the more narrow provisions that are actually at issue in this case, the [district] court neglected to consider important factors that distinguish, first, solicitation from contributions and expenditures, and, second, non-stock corporations organized solely for political purposes from stock corporations.

665 F.2d at 374.

[4] The regulations provide:

> (e) "Members" means all persons who are currently satisfying the requirements for membership in a membership organization, trade association, cooperative, or corporation without capital stock. . . . A person is not considered a member under this definition if the only requirement for membership is a contribution to a separate segregated fund.

Federal Election Commission Regulations, 11 C.F.R. §114.1(e).

[5] The lack of a coherent and consistently applied definition of this critical term has been both the genesis of this court action and the fundamental characteristic of the FEC's position throughout. As the court of appeals noted:

> We are inclined to agree with NRWC that the FEC has barricaded itself behind NRWC's articles of incorporation throughout this litigation and has avoided the core problem of defining the terms "member" and "membership organization."

665 F.2d at 374, fn. 5.

Even as late as January 19, 1978, well after NRWC's solicitations, the Office of FEC General Counsel admitted at a public meeting of the FEC Commissioners that the FEC did not have any definition of a membership organization, nor did it have any idea of the nature of such membership requirements as are necessary for an organization to be a "membership organization."[6]

The decision of the court of appeals dispels the confusion which the FEC itself has manifested concerning the definition of a "member."

In addition, the FEC contends that NRWC's state corporate charter is determinative.[7] Not only has such a requirement not been promulgated by law or regulation, but reference to state law would produce 50 different standards affecting the federal

---

[6] The transcript of this public meeting includes the following:

> COMMISSIONER SPRINGER: What is it, do we have a cut and dried definition of membership organization?
>
> MR. LARRY NOBLE: Not at this point we don't. We know —
>
> COMMISSIONER SPRINGER: Do the regulations cover this?
>
> MR. LARRY NOBLE: It does cover it in the sense that we know what a membership organization is not.
>
> COMMISSIONER SPRINGER: Is not, but we do not know what one is.
>
> MR. LARRY NOBLE: That's correct, sir.
>
> COMMISSIONER SPRINGER: Now, are we able, by this letter to see if we can clarify this point. Bill knows this. Shouldn't we be able to say in the Regulations what a membership organization is?
>
> GENERAL COUNSEL OLDAKER: The Commission did not. Now I think that the problem is that in any event, we won't have Regulations for at least another, uh, Regulations which have been amended for another four or five months so I think that in the interim this would be the only solution to handle this type of problem.

[7] It would be determinative only in the negative. During conciliation, NRWC offered to amend its articles of incorporation, but the FEC conditioned acceptance of that offer on the requirement that NRWC take undefined "other steps" to become a membership organization.

constitutional right of association. Most of the state standards may be modified by the individual organization's charter. Thus, a state-law standard is no standard at all. As the court of appeals correctly noted, there is no rational justification for applying a state law standard, for

> [s]tate definitions of "members" in non-stock corporations for purposes of state corporate or tax law are not likely to take into account the important first amendment considerations at the heart of any controversy surrounding the construction or application of the Federal Election Campaign Act. Further, we are troubled by the fact that the FEC considers the articles of incorporation dispositive only if they negate members for purposes of state law, but not if the articles provide for members [footnotes omitted].

665 F.2d at 374.

NRWC and its members are engaged in the exercise of associational rights protected by the First Amendment. This Court has consistently upheld the First Amendment right to associate. *N.A.A.C.P.* v. *Button*, 371 U.S. 415, 431 (1963), quoted *Sweezy* v. *New Hampshire*, 354 U.S. 234, 250-251 (1957), and referred to *DeJonge* v. *Oregon*, 299 U.S. 353, 364-366 (1937) on the subject:

> "Our form of government is built on the premise that every citizen shall have the right to engage in political expression and association. This right was enshrined in the First Amendment of the Bill of Rights. Exercise of these basic freedoms in America has traditionally been through the media of political associations. Any interference with the freedom of a party is simultaneously an interference with the freedom of its adherents. All political ideas cannot and should not be channeled into the programs of our two major parties. History has amply proved the virtue of political activity by minority, dissident groups. . . ."

The First Amendment guarantees "freedom to associate with others for the common advancement of political beliefs and ideas. . . ." *Kusper* v. *Pontikes*, 414 U.S. 51, 57 (1973).

Buckley v. *Valeo*, 424 U.S. 1, 25, 66 (1976), summarizes the law on this fundamental right:

> [T]he right of association is a "basic constitutional freedom," * * * that is "closely allied to freedom of speech and a right which, like free speech, lies at the foundation of a free society." * * * In view of the fundamental nature of the right to associate, governmental "action which may have the effect of curtailing the freedom to associate is subject to the closest scrutiny." * * *
>
> * * *
>
> Our past decisions have not drawn fine lines between contributors and members but have treated them interchangeably.* * *

The Government has been held to violate an organization's associational rights when it interferes significantly with an activity which the organization needs in order for its protected purposes not to be frustrated. Thus, in *Healy* v. *James*, 408 U.S. 169 (1972), this Court declared invalid a state college's refusal to grant official recognition to the local chapter of the Students for a Democratic Society ("SDS") because such denial prevented the organization from using campus facilities. Without access to these facilities, the association was unable to communicate with students, to participate in campus debates, and generally to pursue its stated purposes. Similarly, in *Brotherhood of Railroad Trainmen* v. *Virginia ex rel. Virginia State Bar*, 377 U.S. 1 (1964), this Court struck down restrictions on labor unions which referred their members to union attorneys for assistance in litigation. Such restrictions denied railroad employees the right "to associate together to help one another to preserve and enforce rights granted them under federal laws . . . ." 377 U.S. at 7. The similarity of the case at bar is apparent. By interfering with NRWC's internal activities, the Government severely limits the ability of NRWC and its members to associate together in an effort to promote voluntary unionism.

This Court has sanctioned the use of the corporate form as a proper vehicle for political association, referring to the National Association for the Advancement of Colored People, a non-profit corporation. *See, Buckley*, 424 U.S. at 15; *N.A.A.C.P.* v. *Alabama*, 357 U.S. 449, 451, 460 (1958).

These decisions establish that the right to associate is enshrined in the Constitution. It does not depend on legislative sanction or definition. It is exercised simply by adhering to an idea and joining with others to advance that idea. When an adherent contributes monetarily to the group espousing the commonly held belief, he is unquestionably a member for constitutional purposes, that is, for purposes of protecting the relationship from unwarranted Federal interference. The right of association encompasses the right to collectively promote commonly held beliefs in the political arena. *Buckley*, at 57.

ERCC is the political arm through which NRWC and its members support candidates who agree with NRWC's principles and oppose candidates who disagree with NRWC's principles. As such, ERCC is the instrument through which NRWC and its members exercise the associational right to extend their efforts into the political arena. The constitutional protection remains identical. Federal interference with that association should not be tolerated.

Furthermore, the Government's abridgement of Respondent's First Amendment associational rights is unsupported by any compelling governmental interest.

In *Buckley*, this Court reiterated the principle that "governmental 'action which may have the effect of curtailing the freedom to associate is subject to the closest scrutiny.' * * * [However,] [e]ven a ' "significant interference" with protected rights of political association' may be sustained if the State demonstrates a sufficiently important interest and employs means closely drawn to avoid unnecessary abridgement of associational freedoms." 424 U.S. at 25 (citations omitted).

Only one governmental interest has been identified by this Court as compelling enough to justify a restriction on associational rights in the context of the Federal Election Campaign Act. That is the interest in preventing the appearance or actuality of corruption that arises from large individual contributions to candidates or their agents, or what this Court has called "the *quid pro quo*" arrangement. 424 U.S. at 26-27.

This principle has been used to sustain convictions for using corporate or union treasury funds to contribute directly to candidates or to defray the expenses of a campaign program coordinated with a candidate. *United States* v. *Boyle*, 482 F.2d 755 (D.C. Cir. 1973), *cert. den.* 414 U.S. 1076 (1973) (Boyle was convicted of making direct contributions to candidates from the union treasury); *FEC* v. *Weinsten*, 462 F. Supp. 243 (S.D.N.Y. 1978) (corporate treasury funds were funneled to a candidate through employees); *United States* v. *Chestnut*, 533 F.2d 40 (2nd Cir. 1976), *cert. den.* 429 U.S. 829 (1976) (corporate checks were drawn at the request of Senator Humphrey's campaign manager to pay for advertising).

On the other hand, the principle has never been applied to the internal communications of an organization. An indictment under former 18 U.S.C. § 610 was dismissed in *United States* v. *Congress of Industrial Organizations*, 335 U.S. 106 (1948), after this Court interpreted § 610 not to apply to an internal union publication supported by the union treasury, and thus avoided addressing the constitutional issue. In *Pipefitters Local Union No. 562* v. *United States*, 407 U.S. 385 (1972), this Court construed the same § 610 to allow unions to form separate segregated funds for which voluntary contributions could be solicited. [8]

[8] *Pipefitters*, 407 U.S. at 414-15, also recognized the need to protect dissenting minority interests from being coerced into supporting political philosophies to which they do not adhere or which they may not wish to promote. This concern is irrelevant to the instant litigation because NRWC's members, unlike employees of a corporation or members of a labor union, clearly are not subject to coercion.

Assuming, *arguendo*, however, that a compelling interest can be shown, means less restrictive than an absolute ban on the solicitation of NRWC's members are already a part of the Amended Act, and have been found to be constitutionally permissible for preventing the creation of undue influence through *quid pro quo* arrangements.

ERCC, like all political action committees ("PACs"), is subject to the contribution limits of 2 U.S.C. § 441a;[9] persons who contribute to PACs, including ERCC, are subject to the contribution limit set by 2 U.S.C. § 441a(a)(1)(C);[10] and § 441b prohibits a corporation from contributing to a PAC and thus to ERCC. These are the means that this Court has held meet the strict scrutiny test, and these are the means that prohibit the *quid pro quo* arrangements that this Court has found to be corrupting.[11]

As the court of appeals stated:

> [s]olicitation, without more, will neither corrupt officials nor distort elections. In our view, contribution limitations and disclosure provisions are a more direct and less restric-

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[9] 2 U.S.C. § 441a(a)(2) provides that a multicandidate political committee is not permitted to contribute more than $5,000 to any federal candidate per election or to any other political committee in a calendar year. A maximum of $15,000 may be contributed in one year to the political committee of a national political party.

[10] 2 U.S.C. § 441a(a)(1)(C) provides that a person (other than a corporation or labor organization) may contribute a maximum of $5,000 to a political committee in a calendar year.

[11] The FEC's reliance on *California Medical Association* v. *Federal Election Commission*, ____ U.S. ____, 101 S. Ct. 2712 (1981) is inapposite to the case at bar. CMA challenged the § 441a(a)(1)(C) restriction on amounts CMA could contribute to CALPAC, an independent multicandidate committee. NRWC makes no such challenge to § 441a(a)(1)(C), primarily because § 441b, which was not at issue in *CMA* v. *FEC*, prohibits NRWC from making *any* contribution to ERCC, and NRWC has no intention of ever making such a contribution.

> tive way to prevent or at least to expose any sort of *quid pro quo* arrangements. . . . We therefore fail to see how the interests asserted by the FEC are served by restricting NRWC's solicitation activities [footnotes omitted].

665 F.2d at 375.

Contrary to the FEC's contention, therefore, the decision of the court of appeals does no more than apply the plain language of 2 U.S.C. § 441b(b)(4)(C), consistently with a long line of First Amendment decisions of this Court, to allow NRWC to solicit its members for contributions to ERCC. As found by the court of appeals:

> [t]he NRWC operation, in our view, ensures that NRWC accurately identifies and solicits only those individuals who share a similar political philosophy and who have evidenced a willingness to promote that philosophy through support of the Committee.

665 F.2d at 376.

CONCLUSION

The purpose of NRWC is to educate the public on and to advocate voluntary unionism. NRWC's members are those who have evidenced a willingness to promote NRWC's philosophy through support of NRWC. The extention of the exercise of associational rights by NRWC and its members into the political arena through ERCC is constitutionally protected under the First Amendment. The decision of the United States Court of Appeals for the District of Columbia Circuit is a proper application of 2 U.S.C. § 441b(b)(4)(C), consistent with a long

line of First Amendment decisions of this Court. A *writ of certiorari*, therefore, should not issue in this case.

Respectfully submitted,

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OCTOBER TERM, 1981

FEDERAL ELECTION COMMISSION, ET AL.,
PETITIONERS,

v.

NATIONAL RIGHT TO WORK COMMITTEE, ET AL.,
RESPONDENTS.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR PETITIONERS

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June 21, 1982

QUESTION PRESENTED

Whether the court of appeals erred in holding that Congress must permit a corporation without capital stock, which uses corporate money to establish and administer a separate segregated political fund and to finance solicitations to such a fund, to solicit anyone the corporation considers to have evidenced a "similar political philosophy."*

*The other named parties to this proceeding are:

The Employee Rights Campaign Committee; Henry L. Walther and Harold P. Ketelhut. Named as other petitioners are: Stanley J. Kimmett, Secretary of the United States Senate and Ex-Officio member of the Federal Election Commission; Edmund L. Henshaw, Jr., Clerk of the United States House of Representatives and Ex-Officio member of the Federal Election Commission; Vernon W. Thomson, Thomas E. Harris, Robert O. Tiernan, Neil Staebler, William Springer and Joan D. Aikens as members of the Commission; and Griffin Bell as Attorney General of the United States. Messrs. Thomson, Tiernan, Staebler and Springer are no longer Commission members; Messrs. John Warren McGarry, Frank P. Reiche, Danny Lee McDonald and Ms. Lee Ann Elliott are currently members of the Commission. William F. Hildenbrand is currently the Secretary of the Senate and Ex-Officio member of the Commission, rather than Stanley J. Kimmett; William French Smith is currently Attorney General.

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In the Supreme Court of the United States

OCTOBER TERM, 1981

No. 81-1506

FEDERAL ELECTION COMMISSION, ET AL.,
PETITIONERS,

v.

NATIONAL RIGHT TO WORK COMMITTEE, ET AL.,
RESPONDENTS.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR PETITIONERS

OPINIONS BELOW

The September 4, 1981, decision of the court of appeals is published at 665 F.2d 731 (D.C. Cir. 1981) and appears at Pet. App. 1a.[1] The November 13, 1981, orders of the court of appeals denying the Commission's petition for rehearing and suggestion for rehearing *en banc* are unreported and appear at Pet. App. 11a-14a. The April 24, 1980, decision and order of the United States District Court for the District of Columbia is published at 501 F. Supp. 422 (D.D.C. 1980) and appears at Pet. App. 15a-56a.

JURISDICTION

The judgment of the court of appeals was entered September 4, 1981. A petition for rehearing and sugges-

[1] "Pet. App." references are to the appendix to the petition for *writ of certiorari* filed by the Federal Election Commission ("Commission" or "FEC"). "J.A." references are to the Joint Appendix.

tion for rehearing *en banc* was denied November 13, 1981. On February 10, 1982, the Commission filed its petition for a *writ* of *certiorari*, which the Court granted on April 5, 1982. J.A. 235. The jurisdiction of this Court is conferred by 28 U.S.C. § 1254(1) (1980).

STATUTES INVOLVED

This case concerns provisions of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. §§ 431, *et seq.* ("FECA" or "the Act"). [2] For the Court's convenience, 2 U.S.C. § 441b is set forth in its entirety at Pet. App. 57a-61a.

STATEMENT OF THE CASE

A. Background

The National Right to Work Committee, Inc. ("NRWC") is a nonprofit corporation without capital stock which is incorporated under the laws of the Commonwealth of Virginia. Pet. App. 16a; J.A. 30. Formed in 1955, NRWC was first incorporated in 1960 in the District of Columbia as a nonprofit corporation. NRWC's original articles of incorporation made no provision for membership in the corporation, and a Statement of Election to accept nonprofit corporation status which it filed with the District of Columbia in 1975, affirmatively

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[2] The Federal Election Campaign Act of 1971, Pub. L. No. 92-225, 86 Stat. 3 (1972) was amended by the Federal Election Campaign Act Amendments of 1974, Pub. L. No. 93-443, 88 Stat. 1263 (1974), by the Federal Election Campaign Act Amendments of 1976, Pub. L. No. 94-283, 90 Stat. 475 (1976), by the Federal Election Campaign Act Amendments of 1977, Title V, Sec. 502, Pub. L. No. 95-216, 91 Stat. 1655 (1977), and by the Federal Election Campaign Act Amendments of 1979, Pub. L. No. 96-187, 93 Stat. 1339 (1980).

stated that it had no members. J.A. 30, 31-32. In 1975, NRWC merged with a Virginia corporation, and Article 2 of the articles of merger filed with the District of Columbia expressly provided that NRWC, the surviving corporation, "shall not have members." J.A. 30. Later in 1975, NRWC incorporated in Virginia as a nonprofit corporation without capital stock, and Article 7 of its articles of incorporation provide that it "shall not have members." J.A. 31. The by-laws adopted by NRWC's board of directors do not recognize any members in the corporation, make no provision for admitting anyone to membership, and do not provide for any membership rights to be accorded to any class of persons. Pet. App. 17a; J.A. 67.[3]

NRWC's funds are accumulated through donations solicited from corporations and individuals. J.A. 61, 84-86. NRWC regularly mails letters to millions of businesses and households whose names and addresses it obtains by purchasing and renting mailing lists.[4] The letters are often not on NRWC's letterhead, but on the letterhead of, and with the signature of, a member of Congress. J.A. 54-56. The letters generally urge the recipient to help NRWC oppose compulsory unionism, often contain a questionnaire about issues relating to compulso-

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[3] From 1971 to 1974 NRWC filed with the Internal Revenue Service a form required of tax exempt organizations (IRS form 990), in which it left blank or placed "N/A" in the space where membership organizations were required to report the amount allocated for political purposes. During a deposition taken in *UAW* v. *National Right To Work Legal Defense and Education Foundation*, No. 839-73 (D.D.C.), NRWC President Reed Larson testified that the question was left unanswered both because NRWC was not a membership organization and because it had no political expenditures. Pet. App. 17a-18a; J.A. 63-67.

[4] As many as 8-11 million such letters were sent out in one month alone. J.A. 55-56.

ry unionism which are calculated to elicit a favorable response, and ask the recipient to send a donation to help publicize the results of the survey and/or to help NRWC publicize its position. The letters say nothing about membership in NRWC, and do not invite the recipients to become members. J.A. 57, 58-59, 102-104, 111-125, 135-145, 152-153. In 1976, NRWC spent more than $1,000,000 on these solicitations. J.A. 63.

Recipients of the questionnaires are not told that NRWC places the names of anyone who returns a questionnaire from one of these mass mailings with acceptable answers on its list of "supporting members" and the name of anyone who returns a contribution on its list of "active members." J.A. 53-54, 58-59.[5] There are no written standards for determining which questionnaire answers will make someone a member. The president and membership director make *ad hoc* decisions on which names are added to the membership lists and the acceptable answers vary from questionnaire to questionnaire. J.A. 58. Those respondents NRWC decides to categorize as

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[5] It appears that the only document in which this "membership" system is set out is a letter which NRWC's counsel sent to the Commission during this litigation. J.A. 53, 65. Theodore Hamilton, who had been director of NRWC's membership operation until 1974, and an active participant in it thereafter, did not know that there were any classes of membership at all, and was never told of any standards for membership. J.A. 234. None of the "active" members NRWC produced for depositions were aware of these classifications of membership, and none of them knew what "active" membership meant. J.A. 69, 71, 73, 75, 77-79, 81, 83, 84-85, 86, 88, 92. When asked which category of member they belonged to, two of them responded that they were "supporting" members, J.A. 69, 75; three responded that they were "sustaining" members, J.A. 71, 77, 86; one responded that both categories were the same, J.A. 73; and three responded that they did not know whether they were members at all, J.A. 83, 84, 92.

members are sent membership cards, and unless they return the card and affirmatively reject being listed as a member, their names will remain on NRWC's membership list in perpetuity. J.A. 53-54.

NRWC's board of directors is self-perpetuating—vacancies are filled by other directors, and contributors have no voice in selecting NRWC's officers or directors. The only privilege of "membership" is receiving newsletters and requests for further contributions. J.A. 60, 67. On the anniversary of their last contribution, active members are sent a new membership card with a request to send another contribution in order to renew membership. However, although the former contributors are not informed of it, NRWC will retain their names on its active membership list whether or not they respond to this solicitation. Only after two years without contributing will NRWC transfer their names to its "supporting" membership list, where they are retained forever. J.A. 60-61.[6]

On December 30, 1975, NRWC established a separate segregated fund, the Employee Rights Campaign Committee ("ERCC"), "to receive and make contributions on behalf of federal candidates." J.A. 32-33. Between May 7 and September 15, 1976, NRWC solicited 267,123 of the individuals who had at one time contributed to NRWC,

[6] None of the "active" members deposed were aware of this procedure. None of them had ever been told how to alter their membership status or how to get their names removed from the membership rolls. J.A. 69, 71, 72, 73, 75-76, 79, 81, 83, 85. Most of them simply assumed, erroneously, that if they stopped sending money NRWC would no longer consider them members. J.A. 69, 73, 75, 79, 81, 85. NRWC terminated the membership status of two of these "active" members as of the date of their depositions, in which they testified that they did not consider themselves to be members because they had not contributed to NRWC that year. J.A. 81, 84-85.

for contributions to ERCC. J.A. 36, 38.[7] ERCC received $77,616.87 in contributions as a result of these solicitations.[8] NRWC completely subsidized the operations of ERCC from its corporate treasury, paying all of the expenses of establishing, administering and soliciting contributions to ERCC. J.A. 32.

B. The Commission Proceedings

On October 21, 1976, the Commission[9] received a complaint alleging that NRWC and ERCC had violated 2 U.S.C. § 441b(b)(4)(A) by using corporate funds to solicit contributions to ERCC from persons who were not NRWC's stockholders, executive or administrative personnel, or their families. J.A. 43-44. NRWC did not deny that it had paid for solicitation of 267,123 people who were not its stockholders, executive or administrative personnel, or their families,[10] but asserted that it considered these people to be "members" of NRWC within the meaning of § 441b(b)(4)(C), a new provision of the Act which became effective on May 11, 1976, and for the first time

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[7] 34,125 contributors were solicited on May 7, 1976; 35,175 were solicited on June 21, 1976; and 197,824 were solicited between September 9 and 15, 1976. J.A. 36, 38.

[8] It appears that some of this money may have come from corporate contributors to NRWC rather than from individuals. J.A. 84-86. NRWC asserted in district court that it was unable to determine from its records which of its contributors were corporations and which were individuals. J.A. 61.

[9] The Commission is an independent agency of the United States Government which is vested with exclusive jurisdiction with respect to the civil enforcement of the Act. 2 U.S.C. §§ 437c(b)(1), 437d(a), (e).

[10] In the district court NRWC stipulated that none of the individuals it solicited for contributions to ERCC were in any of these categories. Pet. App. 22a-23a; J.A. 38.

permitted nonstock corporations that are membership organizations to solicit their members for contributions to a separate segregated fund.[11] On April 21, 1977, the Commission unanimously found that there was reason to believe NRWC and ERCC had violated the Act as alleged. J.A. 48. On October 5, 1977, after completing the enforcement procedure set out in 2 U.S.C. § 437g (1976) and unsuccessfully attempting to resolve the matter through conciliation, the Commission found probable cause to believe that NRWC and ERCC had violated 2 U.S.C. § 441b(b)(4)(A)(i). The Commission authorized the filing of a civil enforcement suit, and so notified NRWC and ERCC by letter dated October 11, 1977. J.A. 43-49.

C. Proceedings Before The District Court

On October 20, 1977, after receiving notification of the Commission's intent to file a civil enforcement action, NRWC and ERCC filed a complaint in the United States District Court for the Eastern District of Virginia, alleging, *inter alia*, that 2 U.S.C. § 441b(b)(4)(C) was unconstitutional. *National Right to Work Committee* v. *FEC*, No. 77-786-A. J.A. 49.

On December 21, 1977, the Commission filed suit in the United States District Court for the District of Columbia, pursuant to 2 U.S.C. §§ 437d(a)(6) and 437g(a)(5)(B) (1976), seeking declaratory and injunctive relief alleging, *inter alia*, that NRWC and ERCC had violated the Act by using corporate money to solicit political contributions from 267,123 members of the public. *FEC* v. *National Right to Work Committee*, No. 77-2175. J.A. 49. ERCC

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[11] As noted *supra*, p. 6 n.7, NRWC solicited 34,125 of these individuals on May 7, 1976, four days before these amendments became effective.

and NRWC defended on the ground that the individuals they solicited were "members" of the corporation under § 441b(b)(4)(C) of the Act, and also raised the same arguments as in the suit filed in the Eastern District of Virginia. Accordingly, that case was transferred to the United States District Court for the District of Columbia, redesignated *NRWC* v. *FEC*, No. 78-0315, and consolidated with *FEC* v. *NRWC*, No. 77-2175. J.A. 2, 3. A stipulated factual record was then compiled by the parties (J.A. 29-93), and both parties filed motions for summary judgment.

The district court found that NRWC had violated § 441b(b)(4)(A) and granted the FEC's motion for summary judgment. "In light of [NRWC's] explicit and implicit disavowals of members," the court concluded that NRWC's reliance on the membership exception to § 441b was "disingenous." Pet. App. 43a. The court found that the evidence established that "NRWC has no members and cannot bring itself within the membership exception." Pet. App. 39a. After carefully reviewing the legislative history, the court concluded that "to permit NRWC to solicit more broadly would be to allow it to spend large amounts [of corporate money] to contact the general public [for political contributions]. It was precisely this practice that Congress sought to check in enacting the limitations on solicitation in the first instance." Pet. App. 47a. The district court also found that "the limited exception allowing corporations without capital stock to solicit their members for contributions is not unconstitutionally vague, . . . [and] the limits on corporate solicitation do not violate the rights to free speech and association secured by the First Amendment." Pet. App. 53a. Accordingly, the court held that "NRWC and ERCC . . . violated the Act by soliciting contributions from persons who were not members of NRWC," and also concluded that the evidence showed that the "violations [were]

knowing and willful in that NRWC . . . failed to reveal highly pertinent facts which tended to disprove its entitlement to the exception it claimed." Pet. App. 53a. [12] NRWC filed its notice of appeal on May 5, 1980. J.A. 13, 16.

D. Proceedings in the Court of Appeals

The court of appeals reversed the district court's decision. The court of appeals did not overturn any of the district court's factual determinations, and did not dispute the district court's analysis of the legislative history of Section 441b(b)(4)(C). Rather, it reasoned that the limitation in NRWC's corporate charter that it "shall not have members" was not binding on the corporation for the purpose of applying federal election law, and that the approach to determining membership in a corporation which the district court had adopted, based on the legislative history of Section 441b(b)(4)(C), was "so narrow that it necessarily infringes on associational rights." Pet. App. 6a. Although it acknowledged that the governmental purposes supporting the ban on corporate political contributions and expenditures in Section 441b "are indeed compelling," the court concluded that those purposes are not served by limiting NRWC's ability to solicit political contributions to its separate segregated fund. Pet. App. 10a. However, the court did not find application of Section 441b to be unconstitutional as applied to NRWC. Rather, without reference to congressional intent, the court interpreted Section 441b(b)(4)(C) to permit NRWC

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[12] "NRWC and ERCC [were] no strangers to FECA. Through knowledgeable counsel, they had participated in lobbying activities before the FEC concerning . . . [§ 441b(b)(4)(C)] . . . and . . . exhibited a thorough familiarity with the Act's legislative history." Pet. App. 41a-42a.

to treat anyone it considers to have evidenced "a similar political philosophy" with the corporation as a member of the corporation for the purpose of soliciting political contributions to its separate segregated fund, even if they are not treated as members for any other purpose. Pet. App. 10a.

The Commission filed a petition for rehearing and suggestion for rehearing *en banc* on October 19, 1981, which was denied on November 13, 1981, by an evenly divided *en banc* court of appeals. Pet. App. 11a-14a. The Commission filed a petition for a *writ* of *certiorari* on February 10, 1982, which the Court granted on April 5, 1982. J.A. 235.

SUMMARY OF ARGUMENT

I.

This case involves the reach and constitutionality of 2 U.S.C § 441b, a provision of the Federal Election Campaign Act which regulates the use of money by corporations and unions in connection with federal elections. Section 441b is designed to eliminate the actual and apparent corruption which has resulted from unrestricted political use of the concentrated economic power which corporations and unions have built up under special legal protections, and to ensure that the individuals whose money goes to make up the treasuries of these organizations are protected against having their money used to support federal candidates they oppose.

Congress's constitutional power to legislate to protect the integrity of the federal election process is well established. Congress first made money contributions to federal candidates by corporations illegal in 1907. Since that time, Congress has continued to study this area almost constantly, and has repeatedly strengthened the terms of the statute, broadening it to cover all contributions and

expenditures of corporate treasury funds in connection with federal elections, and extending it to cover unions in the 1940's. At the same time, Congress has also been sensitive to the interests of the individuals in these organizations to participate in voluntary, joint political activity under the sponsorship of their corporation or union. Thus, the statute was amended in 1971 explicitly to permit any corporation or union to use treasury funds to establish and administer a separate segregated political fund and to solicit contributions to this fund from the individuals who make up the corporation or union.

Congress's determination, based upon 75 years of study and revision, that this carefully balanced legislative scheme is a constitutionally appropriate means to serve the compelling interests in avoiding actual and apparent corruption, and that it adequately accomodates first amendment interests in group political activity by corporations and unions, is entitled to substantial deference. This Court has held that another section of the Act appropriately ensures that political committees which solicit contributions from the general public cannot have their operating and solicitation expenses paid by any one individual or association, because that would enable them to artificially enhance their political influence by turning every dollar they collect from the public into political contributions. *California Medical Assn.* v. *FEC*, 453 U.S. 182, 199 n. 19 (1981). If the separate segregated funds of corporations and unions were allowed to solicit the public for financial support, while the corporation or union pays for all of the fund's expenses, they would be empowered to wield the artificially enhanced political influence which this Court found to be properly prohibited in *California Medical Assn.* Thus, it is appropriate for the statute to limit these specially subsidized separate segregated funds to soliciting their support from within

the corporation or union which finances and controls them.

II.

Section 441b applies to "any corporation whatever," and throughout this litigation NRWC has properly conceded that it is covered by this statutory provision. However, the court of appeals held that NRWC's solicitation of contributions to its separate segregated fund from 267,123 individuals who had at one time responded to an NRWC request for contributions to the corporation was made lawful by Section 441b(b)(4)(C), a new provision enacted in 1976, which permits membership corporations to solicit members of the corporation for contributions to their separate segregated funds. The legislative history of that provision demonstrates, however, that it was intended only to put membership corporations on an equal footing with stock corporations, by permitting them to solicit contributions from a constituency thought to be roughly comparable to stockholders. It was not intended to open up solicitation of any member of the public the corporation considers to have evidenced a "similar political philosophy" with the corporation, as the court of appeals held. NRWC's 267,123 former contributors are not "members" of the corporation under Section 441b(b)(4)(C) because NRWC's articles of incorporation prohibit it from having members, because individuals are added to NRWC's "membership" lists without their prior knowledge or consent, and because the individuals whose names appear on NRWC's "membership" lists have no right to participate in NRWC beyond receiving a newsletter and further financial solicitations. In fact, NRWC's "membership" list appears to be little more than a direct mail solicitation list, containing the names of individuals identified as likely to respond

to NRWC's appeals, which are winnowed out from the millions of names on mailing lists NRWC buys or rents from other sources. Permitting corporations and unions to use such a scheme to circumvent the statute's limitations on the operation of separate segregated funds would completely undermine the careful balance of interests which Congress has built into Section 441b.

ARGUMENT

I. SECTION 441b OF THE ACT IS A CONSTITUTIONAL EXERCISE OF THE POWER OF CONGRESS TO REGULATE THE FEDERAL ELECTION PROCESS, WHICH IS NARROWLY DRAWN TO PROTECT THE ELECTION PROCESS FROM CORRUPTION, WHILE AT THE SAME TIME PERMITTING CORPORATE AND UNION SPONSORSHIP OF GROUP POLITICAL ACTIVITY BY THEIR CONSTITUENTS.

This case involves questions concerning the reach and constitutionality of 2 U.S.C. § 441b, the section of the Federal Election Campaign Act regulating the use of money by corporations and labor organizations in connection with federal elections. The power of Congress, pursuant to Article I, Section 4 of the Constitution, to enact legislation to ensure the integrity of federal elections cannot be questioned. *First National Bank of Boston* v. *Bellotti*, 435 U.S. 765, 787 n.26 (1978); *Buckley* v. *Valeo*, 424 U.S. 1, 13 n.16 (1976); *Ex parte Yarbrough*, 110 U.S. 651, 657-658 (1884). This Court "has never . . . doubted" the importance of the governmental interests in preventing both actual corruption and the appearance of corruption of "elected representatives through the creation of political debts." *First National Bank of Boston* v. *Bellotti*, 435 U.S. at 787 n.26, *citing United States* v. *UAW*, 352 U.S. 567, 570, 575 (1957). Moreover, the "choice of means" to achieve this end "presents a question primarily

addressed to the judgment of Congress." *Burroughs* v. *United States*, 290 U.S. 534, 547 (1934).

The underlying premise of the restrictions placed on corporations and labor organizations by the Act is that direct use of treasury funds by those organizations in connection with federal elections presents special dangers to the integrity of the political process. Congress believed that both of these forms of organizations represented a particular danger of undue influence from the organized economic power vested in them by the laws which govern their operations. Congress accordingly limited those organizations to making contributions or expenditures in connection with federal elections only with money voluntarily donated for that purpose by the individuals who make up the corporation or labor organization. The statutory structure serves two basic aims: (1) It protects the body politic from the disproportionate impact which such organizations could wield if funds gathered for their ordinary purposes, under laws specially protecting them in their pursuit of these purposes, could be utilized directly to support particular political candidates. (2) It protects those who make up the corporation or labor organization from being effectively assessed for payments to political causes in which they may not believe, by requiring that they must be given the opportunity to decide for themselves whether to make contributions to the organization's political fund.

The statute thus prescribes the manner in which corporations and labor organizations participate in federal campaigns. It has evolved, through a historical process of legislation and litigation, to a structure designed to permit the voices of such organizations to be heard, but to assure that the source of the funds which support those voices is the individuals who comprise the organizations, not the operating funds of the organizations, which are

accumulated for other purposes. Section 441b specially legislates for those organizations within its purview, permitting the organization to finance and control its political committee, but limiting such specially controlled and subsidized political committees to raising funds only within the organization.

The fundamental purposes served by the statute cannot be understood except against the backdrop of the history of congressional enactment and reenactment of the basic statute in response to intervening events, court decisions and changing circumstances. This legislative history demonstrates that § 441b has been developed over many years of study and revision into a provision which is narrowly drawn to serve compelling governmental interests, and which fully accomodates the legitimate interests of corporations and labor organizations to sponsor group political activities by those who make up the corporation or union.

A. Section 441b Serves Compelling Governmental Interests.

The Federal Election Campaign Act is a comprehensive legislative plan to protect the federal election process from corruption and abuse. In particular, Section 441b of the Act regulates political contributions and expenditures by corporations and labor organizations. Section 441b is the culmination of more than 75 years of congressional experience in regulating corporate and union participation in federal political activity, resulting in a statute carefully designed to protect the federal election process from the particular adverse effects Congress perceived from unrestricted corporate and union political activity, while at the same time accomodating the first amendment interests of the individuals who make up the corporation or union to participate in joint political activity under the sponsorship of the organiza-

tion. The judgment of the many Congresses which have progressively strengthened the statute's overall prohibition of direct political contributions and expenditures by corporations and unions is entitled to substantial deference from this Court. [13]

Section 441b(a) broadly prohibits contributions or expenditures in connection with a federal election from the treasury funds of any labor organization or "any corporation whatever." While prohibiting the direct political diversion of the substantial amounts of money which are accumulated by these two types of organizations under special legal protections, the Act makes ample provision for corporations and unions to make their political views heard by permitting them to engage in political activities financed by voluntary contributions from those individuals who comprise the organization. Thus, Sections 441b(b)(2)(C) and 441b(b)(4) make it lawful for unions and corporations to spend money to establish and administer a "separate segregated fund to be utilized for political purposes" by the organization, and to finance solicitation of voluntary contributions to such funds from the individuals who make up the union or corporation. The corporation or union can utilize the money it accumulates

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[13] "[I]t is up to legislatures, not courts, to decide on the wisdom and utility of legislation." *Minnesota* v. *Clover Leaf Creamery Co.*, 449 U.S. 456, 469, (1981), *quoting Ferguson* v. *Skrupa*, 372 U.S. 726, 729 (1963). *Accord TVA* v. *Hill*, 437 U.S. 153, 194-195 (1978). Moreover, "[t]he judgment of the Legislative Branch cannot be ignored or undervalued simply because one [group] . . . casts its claims under the umbrella of the First Amendment." *Columbia Broadcasting System* v. *Democratic National Committee*, 412 U.S. 94, 103 (1973). *See also Rostker* v. *Goldberg*, 453 U.S. 57, 64, 65, 67 (1981); *Fullilove* v. *Klutznik*, 448 U.S. 448, 472-473 (1980); *United States* v. *Robel*, 389 U.S. 258, 276 (1967).

in its separate segregated fund to make contributions or expenditures to influence federal elections. [14]

The purposes of this statute are two-fold. First, it is intended to ensure that the large aggregation of wealth which these two types of organizations have been able to accumulate with the aid of special legal protections intended to serve other purposes, cannot be converted into political "war chests," which could be used to incur political debts from legislators and officials they help elect. *See United States* v. *UAW*, 352 U.S. at 579. Corporations are artificial entities whose accumulation of capital is enhanced by such special advantages as limited liability, perpetual life, and special tax treatment. As such, corporations "are endowed with public attributes. They have a collective impact upon society, from which they derive the privilege of acting as artificial entities." *United States* v. *Morton Salt Co.*, 338 U.S. 632, 652 (1950). Unions, too, have been able to achieve sizable economic strength through collective bargaining rights guaranteed by the federal government in the National Labor Relations Act, 29 U.S.C. § 151, *et seq.*, which has given them substantial power to affect the public interest. *See NLRB* v. *Allis-Chalmers Mfg. Co.*, 388 U.S. 175, 180-182 (1967); *United States* v. *White*, 322 U.S. 694, 701-703 (1944). Such "[f]avors from government often carry with them an enhanced measure of regulation," *United States* v. *Morton Salt Co.*, 338 U.S. at 652, and both corporations and labor

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[14] A separate segregated fund can be controlled by the sponsoring union or corporation, whose officials can determine how the money raised by the fund will be spent, and which candidates will be supported. "[S]uch a fund must be separate from the sponsoring union [or corporation] only in the sense that there must be a strict segregation of its monies" from the organization's other funds. *Pipefitters* v. *United States*, 407 U.S. 385, 414-417 (1972). *See also Buckley* v. *Valeo*, 424 U.S. at 28 n.31.

organizations have been extensively regulated by Congress in order to control both external and internal abuses of economic power. [15]

As demonstrated by the legislative history discussed *infra*, Congress acted to prevent the diversion of the assets of these organizations to the political sphere only after it became aware of widespread abuses which were thought to present imminent danger of corruption of the federal election process, resulting in a decline of public confidence in the integrity of elected officials and the fair operation of government. This Court has repeatedly recognized the elimination of such circumstances to be a governmental interest of the highest order. *See, e.g., First National Bank of Boston* v. *Bellotti*, 435 U.S. at 787 n.26; *Buckley* v. *Valeo*, 424 U.S. at 271; *United States* v. *UAW*, 352 U.S. at 570, 571, 575.

The second purpose behind § 441b is to protect the individuals who have paid money into a corporation or union for purposes other than the support of candidates from having that money used to support political candidates to whom they may be opposed. *United States* v. *CIO*, 335 U.S. 106, 113 (1948). This emphasis on ensuring that individuals have the opportunity to make a knowing and voluntary choice before their money is used to support political candidates safeguards the individual's first amendment interest in not being required to contribute to the support of any political candidate against his or her will. [16] It also furthers the important governmental in-

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[15] *See, e.g.*, provisions of the Securities and Exchange Act of 1934, 15 U.S.C. §78, 78b, 78p. Sherman Antitrust Act, 15 U.S.C. § 1; Labor Management Relations Act, 29 U.S.C. §§ 158(b), 302; Labor Management Reporting and Disclosure Act, 29 U.S.C. § 401, *et. seq.*

[16] *See generally International Assn. of Machinists* v. *Street*, 367 U.S. 740 (1961); *Abood* v. *Detroit Board of Education*, 431 U.S. 209 (1977); *Railway Employees' Dept.* v. *Hanson*, 351 U.S. 225 (1956).

terest in "sustain[ing] the active, alert responsibility of the individual citizen in a democracy for the wise conduct of government," by ensuring that each individual makes a personal decision about the political options he or she will support. *First National Bank of Boston* v. *Bellotti*, 435 U.S. at 788-789, *quoting United States* v. *UAW*, 352 U.S. at 575.

The determination of Congress that this legislative scheme, which it has developed over many years of experience and revision, is an appropriate and constitutional means to achieve the important governmental interests identified above, is entitled to great weight in this Court's deliberations. *Rostker* v. *Goldberg*, 453 U.S. at 64, 67; *International Assn. of Machinists* v. *FEC*, ___ F.2d ___, 2 Fed. Elec. Camp. Fin. Guide (CCH) ¶ 9171, at 51,274 (D.C. Cir. April 6, 1982) (en banc). For the present statute represents an overall balance derived from more than 75 years of constant concern with protecting the federal election process from particular concentrations of economic power, and the attendent reduction of public confidence in the integrity of the election process.

The origins of the statutory scheme embodied in Section 441b date back to the last century.[17] The growing concentration of economic power of American corpora-

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[17] It should be borne in mind that the highlights of the legislative history of § 441b that are discussed herein constitute only a fragment of the effort Congress has put into guarding federal elections from campaign finance abuses. For the record of congressional investigations, hearings, debate and legislation in this area is much too extensive and complex to permit even a summary within the confines of this brief. The government's brief in *United States* v. *CIO*, 335 U.S. 106 (1948) took more than 45 pages to summarize the legislative history up to that time, and included a 95 page appendix containing the 1947 legislative history alone. This Court has extensively reviewed that history in *United States* v. *CIO*, *supra*, and in *United States* v. *UAW*, 352 U.S. at 570-587. And in *Pipefitters* v. *United*

tions during the latter part of the 19th century aroused growing public concern. Corporate abuses of power in the economic sphere had already resulted in enactment of the Sherman Antitrust Act, and a public outcry also arose over the corruption of government from the domination of federal elections by corporate money. As early as 1894, Elihu Root called for the prohibition of political contributions by corporations:

> The idea is to prevent . . . the great aggregations of wealth from using their corporate funds, directly or indirectly, to send members of the legislature to these halls in order to vote for their protection and the advancement of their interests as against those of the public.

United States v. *UAW*, 352 U.S. at 571. However, it was not until corporate excesses in the 1904 presidential elections came to light that "concern over the size and source of campaign funds crystallized popular sentiment for federal action to purge national politics of what was perceived to be the pernicious influence of 'big monies' campaign contributions." *Id.* [18] In 1905 President Theodore

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States, 407 U.S. at 409-412, 422-427, 430-431, this Court reviewed a portion of the legislative history of the 1971 amendments. In the years between those in which legislation was enacted, there was an almost constant stream of hearings and investigations by special congressional committees.

[18] For example, over 70% of the contributions collected by the Republican National Committee in 1904 had come from representatives of corporations. Pringle, *Theodore Roosevelt: A Biography*, 357 (1931) *citing Campaign Contributions: Testimony Before a Subcommittee of the Committee on Privilege and Elections, United States Senate*, 62d Cong., 2d Sess. Vol. I, 204-206 (1912). In September, 1905, the Legislative Insurance Investigation Committee of New York (Armstrong Committee) began an extensive investigation of the misuse of insurance trust funds for political purposes. It discovered that in the presidential campaigns of 1896, 1900 and 1904,

Roosevelt called for legislation banning political contributions by corporations:

> The fortunes amassed through corporate organization are now so large, and vest such power in those that wield them, as to make it a matter of necessity to give to the sovereign—that is, to the Government, which represents the people as a whole, some effective power of supervision over their corporate use.
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> * * * *
>
> [D]irectors should not be permitted to use stockholders' money for such [political] purposes.

40 Cong. Rec. 91, 96 (1905). *See also* 41 Cong. Rec. 22 (1906) (President Roosevelt's annual message to Congress); *Hearings on Contributions to Political Committees in Presidential and Other Campaigns Before the House Committee on Election of President, Vice President, and Representatives in Congress*, 59th Cong., 1st Sess. 76 (1906).

This popular demand for reform led to enactment of the Tillman Act, 34 Stat. 864 (1907), which prohibited "any corporation whatever" from making "money contributions" in connection with federal elections. Congress soon found the Tillman Act to be inadequate, however, and by 1909 legislation was being proposed to extend the Tillman Act to prohibit corporate contributions of "anything of value," and to reach state as well as federal elections. In 1910 and 1911, Congress "translated popular

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money belonging to insurance policyholders was paid into the Republican Party's treasury in the following amounts: Equitable Life, $50,000; Metropolitan Life, $7,500; Mutual Life, $90,000; Prudential Life, $26,000. *Report of the Joint Committee of the Senate and Assembly of the State of New York Appointed to Investigate the Affairs of Life Insurance Companies*, 1905-1906, vol. X at 24, 110, 298, 334, 397. *See also* 42 Cong. Rec. 696 (1909).

demands for further curbs upon the political power of wealth" into legislation requiring the disclosure of campaign contributions and expenditures. *See United States* v. *UAW*, 352 U.S. at 575.[19]

In the early 1920's, Congress again focused on campaign financing, which it continued to view as a serious problem affecting the integrity of government.[20] After several years of deliberation, the Federal Corrupt Practices Act, 43 Stat. 1070, was signed into law in 1925. Section 313 of that Act strengthened the prohibition of corporate contributions by extending it to include "anything of value" rather than just money contributions.[21] The 1925 Act also made acceptance of a corporate contribution a crime, as well as the giving of one. *See United States* v. *UAW*, 352 U.S. at 570-577.

The legal protections afforded to labor organizations in 1935 by the National Labor Relations Act, and the increase in economic activity generated by World War II, strengthened the economic power of unions enormously.

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[19] The Act of July 25, 1910, 36 Stat. 822, required financial disclosure by federal candidates after the elections. The Act of August 19, 1911, 37 Stat. 25, amended the 1910 statute to require preelection disclosure as well.

[20] *See, e.g.*, 65 Cong. Rec. 9507-08 (1924) ("One of the greatest political evils of the time is the apparent hold on political parties which business interests and certain organizations seek and sometimes obtain by reason of liberal campaign contributions"); H.R. Rep. No. 721, 68th Cong., 1st Sess. 4 (1924) ("The purchase of power and influence . . . by means of great contributions, reflects both upon our Government and those from whom the power is derived").

[21] The 1925 Act expanded the definition of prohibited contributions to cover "a gift, subscription, loan, advance, or deposit of money, or anything of value, and includes a contract, promise, or agreement whether or not legally enforceable, to make a contribution." 43 Stat. 1071.

This unprecedented growth led to perceived abuses by union officials, which stimulated reform legislation to curb the power of union officials adversely to affect the public interest. As with corporations four decades earlier, one area of particular public concern was the reported creation of huge "war chests" by economically powerful unions. *See United States* v. *UAW*, 352 U.S. at 578-579, *quoting from Hearings Before a Subcommittee of the House Committee on Labor on H.R. 804 and H.R. 1483*, 78th Cong., 1st Sess. 2 (1944).

In response to the dramatic increase in union political activity during the 1936 elections,[22] several pieces of legislation to regulate the political activities of unions were proposed in 1937.[23] None of these proposals were successful, but in 1940 Congress enacted the second Hatch Act, 54 Stat. 767, which effectively imposed a $5,000 limit on contributions to federal candidates by unions and other unincorporated associations. However, the labor movement was able to circumvent this limitation by making numerous smaller contributions through local unions in place of the large contributions which had

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[22] In 1936, contributions and loans from labor organizations to the Democratic National Committee totalled more than $750,000. S. Rep. No. 151, 75th Cong., 1st Sess. 127-133 (1937). This contrasts with a total of only $95,000 which the American Federation of Labor had expended for political purposes during the entire twenty year period of 1906-1925. Overacker, *Labor's Political Contributions*, 54 Pol. Sci. Q. 56, 56-58 (March, 1939).

[23] *See, e.g.*, S. Rep. No. 151, 75th Cong., 1st Sess. 135 (1937) (proposing to extend the Federal Corrupt Practices Act's prohibition of contributions to "all organizations, associations, or enterprises, incorporated or otherwise, whose aims or purposes are the furtherance of group, class, or special interests"); S. 2712, 75th Cong., 1st Sess. (1937) (proposing to make it an unfair labor practice for a labor union to "make any compulsory assessment, or require any contribution for political purposes").

been made before by national labor organizations.[24] Thus, as part of the War Labor Disputes Act of 1943, 57 Stat. 167, Congress extended the Federal Corrupt Practices Act's prohibition on contributions to apply to unions, as well as corporations, for the duration of the war.[25]

Unions also proved capable of circumventing the prohibitions of the Corrupt Practices Act by making political expenditures in support of the candidates they supported, rather than contributing directly to the candidate's own campaign funds.[26] As a result, Section 304 of the Labor Management Relations Act of 1947 (Taft-

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[24] In the 1940 elections, 6.2% of the Democratic National Committee's contributions came from labor unions, compared with 5.1% in 1936, before the Hatch Act was passed. Overacker, *Campaign Finance in the Presidential Election of 1940*, 35 Am. Pol. Soc. Rev. 701, 715-716 (1941).

[25] Congressman Landis, who was the author of the 1943 provision, explained the stimulus for the bill:

> The public was aroused by many rumors of huge war chests being maintained by labor unions, of enormous fees and dues being extorted from war workers, of political contributions to parties and candidates which later were held as clubs over the head of high Federal officials.

United States v. *UAW*, 352 U.S. at 566-567, *quoting from Hearings before a Subcommittee of the House Committee on Labor on H.R. 804 and H.R. 1483*, 78th Cong., 1st Sess. 2 (1944).

[26] *See, e.g.*, H.R. Rep. No. 2093, 78th Cong., 2d Sess. 3, 11 (1945); H.R. Rep. No. 2739, 79th Cong., 2d Sess. 39-40 (1947). Both the Senate and the House established special subcommittees after passage of the War Labor Disputes Act to investigate the political activities of labor organizations. *See Report of the Special Committee to Investigate Presidential, Vice-Presidential and Senatorial Campaign Expenditures, 1944*, S. Rep. No. 101, 79th Cong., 1st Sess. (1945); *Report of the Special Committee to Investigate Campaign Expenditures, House of Representatives, 1944*, H.R. Rep. No. 2093, 78th Cong., 2d Sess. (1945); *Report of the Special Committee to Investigate Senatorial Campaign Expenditures, 1946*, S. Rep. No. 1, Pt. 2, 80th Cong., 1st Sess. (1947); and *Report of the Special Committee on Campaign Expenditures, 1946, to the House of Representatives*, H.R. Rep. No. 2739, 79th Cong., 2d Sess. (1947).

Hartley Act), 61 Stat. 136, not only permanently extended the Federal Corrupt Practices Act to unions as well as corporations, but also broadened its proscription to include "expenditures" as well as contributions. As Senator Taft explained,

> [W]e have long prohibited corporations from contributing money for political purposes, and it was always supposed that the law prevented a corporation from . . . advertising in newspapers for that purpose, until labor organizations were included . . . and then it was said that the law prohibited contributions, but that political advertisements and political pamphlets could be published by the union or corporation itself. So what we are proposing to do is to subject labor organizations to exactly the same prohibition to which corporations have been subjected, and, so far as I know, including the things which I think the original law covered but regarding which doubt was raised by labor organizations.

93 Cong. Rec. 6436 (1947), *reprinted in II NLRB, Legislative History of the Labor Management Relations Act of 1947* (GPO, 1948) ("*1947 Legis. Hist.*") at 1527.[27] In 1948, the prohibition was reenacted, without substantive change, as 18 U.S.C. § 610.

Congress reaffirmed the general prohibition on federal political contributions and expenditures by corporations and unions in the Federal Election Campaign Act of 1971,

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[27] Another provision of the Taft-Hartley Act, Section 302, also regulated the use of the money which was beginning to flow into union treasuries as a result of large scale collective bargaining. In particular, Section 302(c)(5) regulated the huge "welfare" funds that unions were beginning to build. As Senator Ball, who was also a member of a Senate subcommittee investigating union political activities, explained in introducing the amendment which became Section 302,

> [U]nless we make sure that such funds, when they are established, are really trust funds and are actually used for the benefit to employees specified in the agreement, there is very grave

which also added several subsections to 18 U.S.C. § 610 which were primarily "clarifications of prior law." *Pipefitters* v. *United States*, 407 U.S. at 399, 410-411. These subsections codified several types of internal political activities by corporations and unions which, on the basis of this Court's reasoning in *United States* v. *CIO*, were thought to represent legitimate group political action which was not intended to be banned by § 610. These new provisions, which originated in an amendment offered by Representative Hansen, retained the prohibition of direct contributions and expenditures, but expressly exempted from the definition of "contributions or expenditures": (1) communications by a corporation to its stockholders and their families and by a labor organization to its members and their families "on any subject," (2) nonpartisan get-out-the-vote campaigns aimed at a corporation's stockholders and their families or a union's members and their families, and (3) "the establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes by a corporation or labor organization."

Congressman Hansen viewed this internal political activity as a legitimate extension of the fiduciary obligations of the officers of these organizations toward the individuals who make up the organizations:

> If an organization, whether it be the NAM, the AMA or the AFL-CIO, believes that certain candidates pose a threat to its well-being or the well-being of its

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danger that the funds will be used for the personal gain of union leaders, *or for political purposes*, or other purposes not contemplated when they are established, and that they will in fact become rackets.

93 Cong. Rec. 4678 (1947), *1947 Legis. Hist.* at 1305 (emphasis added). These welfare funds were perceived by Congress as a potential source of "war chests" for the unions. 93 Cong. Rec. 4746, 4747 (1947), *1947 Legis. Hist.* at 1311, 1312 (remarks of Sen. Taft).

> members or stockholders, it should be able to get its views to those members or stockholders. As fiduciaries for their members and stockholders the officers of these institutions have a duty to share their informed insights on all issues affecting their institution with their constituents. Both union members and stockholders have the right to expect this expert guidance.

117 Cong. Rec. 43,380 (1971), *reprinted in Legislative History of the Federal Election Campaign Act of 1971*, at 758 (1981) (*"1971 Legis. Hist."*). As this Court concluded in *Pipefitters* v. *United States*, 407 U.S. at 431 n.42, "[t]his reasoning, of course, applie[d] as well to solicitations for contributions to voluntary political funds."

Thus, as summarized by Congressman Hansen, the purpose of the 1971 amendments was to accomodate legitimate interests in engaging in group political activity without undermining the important purposes § 610 was intended to serve.

> [T]here is broad agreement as to the essence of the proper balance in regulating corporate and union political activity required by sound policy and the Constitution. It consists of a strong prohibition on the use of corporate and union treasury funds to reach the general public in support of, or opposition to Federal candidates and a limited permission to corporations and unions, allowing them to communicate freely with members and stockholders on any subject . . . and to make political contributions and expenditures financed by voluntary donations which have been kept in a separate segregated fund. This amendment writes that balance into clear and unequivocal statutory language.

117 Cong. Rec. 43,381 (1971), *1971 Legis. Hist.* at 759, *quoted in Pipefitters* v. *United States*, 407 U.S. at 431.

In 1976, Congress once again reaffirmed the prohibition of corporate and union contributions and ex-

penditures by reenacting it as part of the Federal Election Campaign Act, under the administration of the Commission, thus removing it from the criminal code. In addition, Congress adjusted the balance it had struck in the 1971 legislation by adding several new provisions to permit corporations to use corporate funds to solicit contributions to their separate segregated funds from certain constituencies which had not been recognized in the 1971 Act. Thus, Section 441b(b)(4)(A) now permits any corporation to solicit contributions to its separate segregated fund from its executive and administrative personnel and their families in addition to its stockholders and their families; [28] Section 441b(b)(4)(C) permits nonstock corporations which are membership organizations to solicit contributions from their members; and Section 441b(b)(4)(D) permits incorporated trade associations to solicit contributions from the stockholders and executive and administrative employees of corporate members of the trade association, under certain restrictions.

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[28] The House Committee explained:

> [T]he bill broadens the permissions contained in the present law to allow corporations to communicate with and solicit voluntary contributions from "executive officers." The Committee believes that management personnel as well as stockholders should be considered to be among the beneficial owners of a corporation . . . [The bill] continues the rule that unions may only solicit those they represent—their members—and reaffirms the intent of the 1971 Congress that corporations must also confine their activities to a roughly comparable group—namely, stockholders and executive officers.

H.R. Rep. No. 917, 94th Cong., 2d Sess. 7 (1976), *reprinted in Legislative History of the Federal Election Campaign Act of 1976* at 807 (1977) ("*1976 Legis. Hist.*"). The new Section 441b(b)(4)(B) also gave a limited permission for a corporation to solicit its nonmanagement employees, and a union to solicit management employees and stockholders of a corporation whose employees it represents.

This legislative history demonstrates that Congress has "cautious[ly] advance[d], step by step," *NLRB* v. *Jones & Laughlin Steel Corp.*, 301 U.S. 1, 46 (1937), to eliminate abuses only as they appeared to represent concrete dangers to the integrity of the political process, and that Congress has carefully considered the first amendment interests affected by this sort of legislation, limiting the reach of the statute to ensure that it does not unnecessarily intrude on constitutionally protected activity.

B. The Provisions Of Section 441b Are Narrowly Drawn To Achieve Its Purposes.

The constitutional rights of free political speech and association lie "at the foundation of a free society." *Buckley* v. *Valeo*, 424 U.S. at 25, *quoting Shelton* v. *Tucker*, 364 U.S. 479, 486 (1960).

> Yet, it is clear that "[n]either the right to associate nor the right to participate in political activities is absolute." *CSC* v. *National Assn. of Letter Carriers*, 413 U.S. 548, 567 (1973). Even " 'significant interference' with protected rights of political association" may be sustained if the State demonstrates a sufficiently important interest and employs means closely drawn to avoid unnecessary abridgement of associational freedoms.

Buckley v. *Valeo*, 424 U.S. at 25, *quoting Cousins* v. *Wigoda*, 419 U.S. 477, 488 (1975).

From the discussion above, it can be seen that Section 441b is narrowly drawn to deal with the specific abuses which Congress has endeavored for more than 75 years to eliminate from the federal election process. As this Court noted in *First National Bank of Boston* v. *Bellotti*, 435 U.S. at 788 n.26,

> [t]he overriding concern behind the enactment of statutes such as the Federal Corrupt Practices Act

> was the problem of corruption of elected representatives through the creation of political debts . . . The importance of the governmental interest in preventing this occurrence has never been doubted.

Congress has made a concerted effort in § 441b to accomplish this important objective while at the same time providing an avenue for corporations and unions to sponsor voluntary group political activity for individuals who make up the organizations.

Of course, nothing in the Act interferes with a corporation's ability to publicize its views on any subject other than federal elections.[29] Indeed, the record shows that NRWC has taken full advantage of its right to communicate its views to the public. J.A. 97-219. And, so long as the money used comes solely from a segregated fund containing only the voluntary contributions of the individuals recognized by Congress to comprise the organization, corporations and unions are also free to contribute to federal candidates and to publicize their views on federal elections. The Commission's records show that during the 1980 elections more than 1100 corporations contributed more than $21,000,000 to federal candidates through their separate segregated funds, and unions contributed more than $14,000,000 through their separate segregated funds. *See* FEC Press Release, February 21, 1982. Clearly, unlike the statute this Court found unconstitutional in *Bellotti*, *supra*, Section 441b is not intended to, and has not had the effect of interfering with the free flow of political information and opinion from corporations and unions to the electorate.[30]

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[29] Since § 441b only applies to corporations and labor organizations, it has no effect upon the right of individual citizens to participate fully in federal election activities.

[30] FEC records indicate that corporations have chosen to use their separate segregated funds almost exclusively for the purpose of

But the special provision permitting corporations and unions, unlike any other type of organization, to establish, control and finance separate segregated funds is limited by the Act to serving its purpose of providing an avenue for the organization to express its own views with its internal resources. [31] Separate segregated funds are controlled by the union or corporation that establishes them; they are nothing more than the "political arm of the sponsoring organization." *Bread Political Action Committee* v. *FEC*, 635 F.2d 621, 624 n.3 (7th Cir. 1980) (en banc), *rev'd on other grounds*, ____ U.S. ____, 102 S. Ct. 1235 (Mar. 8, 1982). Moreover, unlike any other political committee, the operations of separate segregated funds may be completely financed by the sponsoring organization, so that they can turn every dollar they collect through solicitations into political contributions or expenditures. *See California Medical Assn.* v. *FEC*, 453 U.S. at 199 n.19. These special advantages are provided for separate segregated funds only because they are intended to function as a surrogate for the direct political contributions by the organization itself which the statute prohibits. Thus, the statute properly limits separate segregated funds to soliciting contributions only within the sponsoring organization, from those classes of individuals whose interests the corporation or union has a fiduciary obligation to represent. *See* pp. 26-27, *supra*.

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making contributions to federal candidates' campaigns, rather than to make independent expenditures to publicize corporate views on federal candidates. *See* FEC Press Release, February 21, 1982.

[31] In *California Medical Assn.* v. *FEC*, 453 U.S. at 201, the Court commented:

> The differing restrictions placed on individuals and unincorporated associations on the one hand, and on unions and corporations, on the other, reflect the judgment by Congress that these entities have differing structures and purposes, and that they therefore may require different forms of regulation in order to protect the integrity of the electoral process.

This does not mean that individuals who are stockholders or managers of a corporation are barred from setting up a political committee which solicits contributions from the public. However, like any other multicandidate political committee which is not limited to representing the views of a particular organization, such a committee could not be subsidized by corporate funds, but would have to pay its operating costs out of the contributions it solicits. *Bread Political Action Committee* v. *FEC*, 635 F.2d at 631; *California Medical Assn.* v. *FEC*, 453 U.S. at 199 n.19. The reason for permitting corporations and unions to subsidize only political committees which are limited to soliciting contributions within the organization was stated in *California Medical Assn.* v. *FEC*, 453 U.S. at 199 n.19:

> [I]f an individual or association was permitted to fund the entire operation of a political committee, all moneys solicited by that committee could be converted into contributions, the use of which might well be dictated by the committee's main supporter. In this manner, political committees would be able to influence the electoral process to an extent disproportionate to their public support and far greater than the individual or group that finances the committee's operations would be able to do acting alone. In so doing, they could corrupt the political process in a manner that Congress, through its contribution restrictions, has sought to prohibit.

If corporations and unions were able to subsidize political committees which use publicly solicited funds for political purposes, they would be able to wield the artificially enhanced political influence which this Court held that the Act was designed to prevent in the *California Medical Assn.* case. Thus, Congress has properly limited the special provisions permitting corporations and unions to completely subsidize their separate segregated funds to

committees which only seek support from those individuals within the organization whose interests they have a fiduciary obligation to represent.

From this discussion it should be clear that the court of appeals' conclusion that the purposes of the statute's solicitation restrictions are not served by applying them to a nonprofit corporation like NRWC resulted from its erroneous insistence upon looking only at solicitation, rather than at the flow of corporate and union money which the statute was designed to regulate. Pet. App. 6a-10a. [32] Section 441b does not aim at restricting solicitation as such; rather, it is intended to prevent not only NRWC, but *everyone*—corporation, union, unincorporated association or individual—from completely financing the operations of a multicandidate political committee which converts contributions from the public into political contributions and expenditures. Thus, corporations and unions many only subsidize committees which are narrowly designed to represent the views of those individuals within the organization whose interests the corporation or union is obligated to represent, and who choose to support the organization's political activities. [33]

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[32] Section 441b(b)(4)(A) permits unions, like membership corporations, to solicit contributions to their separate segregated funds from "members." The court of appeals suggested no basis for distinguishing NRWC's "ideological" support of candidates who favor right-to-work laws from unions' support of candidates who oppose such laws.

[33] Although this Court has never directly resolved the constitutionality of Section 441b, many lower courts have addressed the issue, and have concluded without exception that it is a constitutional statute, narrowly drawn to serve compelling purposes in the manner least restrictive of first amendment interests. *California Medical Assn.* v. *FEC*, 641 F.2d 619, 629 (9th Cir. 1980) (en banc), *aff'd*, 453 U.S. 182 (1981); *Bread Political Action Committee* v. *FEC*, 635 F.2d at 631, 633, *rev'd on other grounds*, ___ U.S. ___, 102 S. Ct. 1235 (March 8, 1982); *FEC* v. *Lance*, 635 F.2d 1132, 1141 (5th Cir.) (en banc), *cert. denied*, ___ U.S. ___, 101 S. Ct. 3151 (July 2, 1981);

II. NRWC'S EXPENDITURE OF CORPORATE MONEY TO FINANCE SOLICITATION OF THE GENERAL PUBLIC FOR CONTRIBUTIONS TO ITS SEPARATE SEGREGATED FUND VIOLATED 2 U.S.C. § 441b.

As the discussion in the first section demonstrates, Section 441b of the Act permits corporations like NRWC to use corporate funds to administer and finance the operation of a separate segregated fund, only if that fund limits its solicitation of support to certain classes of individuals within the corporation, such as stockholders, executive and administrative employees, and members, if it is a nonstock membership organization. In the following discussion we demonstrate that NRWC is governed by the provisions of Section 441b, and that the individuals it solicited for contributions to ERCC in 1976 do not fall within any of these categories.

A. As A Corporation, NRWC Is Subject To The Provisions Of Section 441b.

Although the court of appeals erroneously concluded that the purposes of Section 441b are not served when applied to NRWC, it did not proceed to the logical holding that the statute should not be applied to NRWC. Instead, by expansively interpreting an exception to Section 441b,

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United States v. *Chestnut*, 533 F.2d 40, 51 n.12 (2d Cir.), *cert. denied*, 429 U.S. 829 (1976); *United States* v. *Boyle*, 482 F.2d 755, 763 (D.C. Cir.), *cert. denied*, 414 U.S. 1076 (1973); *United States* v. *Pipefitters Local Union No. 562*, 434 F.2d 1116, 1123 (8th Cir. 1970), *adhered to en banc*, 434 F.2d 1127, *rev'd on other grounds*, 407 U.S. 385 (1972); *FEC* v. *National Education Assn.*, 457 F. Supp. 1102 (D.D.C. 1978); *FEC* v. *Weinsten*, 462 F. Supp. 243 (S.D.N.Y. 1978); *United States* v. *Clifford*, 409 F. Supp. 1070, 1072 (E.D.N.Y. 1976); *Schwartz* v. *Romnes*, 357 F. Supp. 30, 36 (S.D.N.Y. 1973), *rev'd on other grounds*, 495 F.2d 844 (2d Cir. 1974); *United States* v. *Brewers' Assn.*, 239 F. 163 (W.D.Pa. 1916). *See also International Assn. of Machinists* v. *FEC*, 2 Fed. Elec. Camp. Fin. Guide (CCH) at 51,291-51,292.

the court of appeals granted NRWC a preferred position under the statute which it could not have obtained if Section 441b had not applied to it: NRWC is permitted to have a separate segregated fund like other corporations and unions, but is not limited to internal solicitations for that fund as are other corporations and unions.

Given this result it is not surprising that, far from suggesting that Section 441b should not apply to its activities, NRWC has consistently claimed the benefit of the statute's special provisions. J.A. 20, 27. Indeed, NRWC's complete financing of the operations of ERCC would unquestionably have constituted an unlawful contribution to a multicandidate political committee under 2 U.S.C. § 441a(a)(1)(C) if NRWC had not been subject to the special provisions of § 441b, which permit corporations to finance and control separate segregated funds. *See California Medical Assn.* v. *FEC*, 453 U.S. at 199 n.19. [34]

NRWC's concession that it falls within the coverage of Section 441b is correct. The provision clearly states that it applies to "any corporation whatever," without exception. As this Court recently reiterated in construing another section of this Act, "the plain language of [the statute] controls its construction, at least in the absence of 'clear evidence' . . . of a 'clearly expressed legislative intention to the contrary.' " *Bread Political Action Com-*

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[34] The Act does not require corporations or unions to report the amount expended to administer and finance their separate segregated funds, so there is no public record of how much NRWC spent to finance ERCC. However, it is clear that NRWC has spent much more than the $5,000 limit of § 441a(a)(1)(C) which this Court held to be the limit which the California Medical Association could give to the multicandidate political committee it supported. Indeed, at the 1976 rate of 13 cents per letter, postage alone for the 267,123 solicitations sent out from May to September of 1976 would amount to $34,726.

mittee v. *FEC*, ___ U.S. ___, 102 S. Ct. 1235, 1238 (March 8, 1982).

Rather than indicating an intention to exempt any corporations, the legislative history demonstrates that Congress was well aware of the breadth of the language used and fully intended it to mean what it says. *See, e.g.*, 89 Cong. Rec. 5781 (1943) ("[T]he language further says 'or for any corporation whatever.' Mr. President, that language is about as broad as language can be . . ."). In fact, Senator Taft, whose views on the reach of this statute this Court found to be "controlling" in *Pipefitters* v. *United States*, 407 U.S. at 409, clearly indicated that the prohibition was intended to cover all corporations, even corporations organized for religious purposes.[35] Finally, the Commission has construed the statutory language "any corporation whatever" to reach *all* corporations. Thus, in Advisory Opinion ("AO") 1975-16, 1 Fed. Elec. Camp. Fin. Guide (CCH) ¶ 5111, at 10,036 (Aug. 19, 1975), the Commission held that this statutory language covered a nonprofit, incorporated post of the Veterans of Foreign Wars. By reenacting the statutory language a year later without change, Congress implicitly adopted the Commission's interpretation. *Merrill, Lynch, Pierce, Fenner & Smith* v. *Curran*, ___ U.S. ___, 102 S. Ct. 1825, 1841

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[35] SEN. MAGNUSON: Would the provision in any way deny the right of a religious organization to publish pamphlets in behalf of a candidate because, let us say, the organization supported him on moral grounds?

SEN. TAFT: If the organization is a corporation, I assume it could not do so directly. If the organization publishes religious papers that it can sell, that is all right; but the organization cannot take the church members' money and use it for the purpose of trying to elect a candidate or defeat a candidate, and they should not do so.

93 Cong. Rec. 6437 (1947), *1947 Legis. Hist.* at 1534-35.

n.66 (May 3, 1982); *Lorillard* v. *Pons*, 434 U.S. 575, 580-81 (1978).

Senator Taft also stated that one of the purposes of the statute was to preclude an organization which derives its funds in part from other corporations from converting those corporate funds into political contributions or expenditures. "Such an association receiving corporation funds and using them in an election would violate the law, in my opinion, exactly as the PAC, if it got its funds from labor unions, would violate the law." 93 Cong. Rec. 6437 (1947), *1947 Legis. Hist.* at 1531. *See also* 93 Cong. Rec. 6436 (1947), *1947 Legis. Hist.* at 1530 (remarks of Sen. Taft); 117 Cong. Rec. 43,380 (1971), *1971 Legis. Hist.* at 759 (remarks of Rep. Hansen) (noting that the statute applies to the National Association of Manufacturers and the American Medical Association). Thus, even if the court of appeals had been correct in concluding that the purposes of Section 441b might not apply to some nonprofit corporations, NRWC would still be within the purview of the statute, for NRWC has admitted that it receives a portion of its treasury funds from contributions from other corporations. J.A. 20, 22. Indeed, NRWC boldly asserted in the district court that it "is fully entitled to receive corporate funds which may be utilized for the purpose of financing the operation costs, including the cost of solicitations, of its separate segregated fund." J.A. 21.[36]

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[36] It was because NRWC conceded that the solicitation provisions of § 441b applied to its activities, that the district court ordered the Commission's discovery into the extent of NRWC's financial support by other corporations discontinued. J.A. 26-28.

B. The Individuals NRWC Solicited For Political Contributions Were Not "Members" Of NRWC Within The Meaning Of Section 441b(b)(4)(C) Of The Act.

Ignoring both the legislative history and the Commission's interpretation of Section 441b(b)(4)(C), the court of appeals construed that provision to permit a corporation to treat anyone it considers to have evidenced a "similar political philosophy" with the corporation as a "member" of the corporation for purposes of soliciting political contributions, even if they are not considered members for any other purpose. Not only is the court of appeals' definition so vague as to be virtually unenforceable, if not actually unconstitutional,[37] but it is contrary to congressional intent in enacting Section 441b(b)(4)(C) and would disrupt the carefully balanced structure of the Act described in Part I.

As noted on pp. 27-28, *supra*, Section 441b(b)(4)(C) was one of several adjustments to the permitted scope of solicitation of contributions to separate segregated funds that were enacted in 1976. As the House Committee Report stated, in 1976, Congress did not contemplate changing the statute's basic approach; rather, it intended to "continue[ ] the rule that unions may only solicit those

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[37] In order to apply the court of appeals' interpretation of §441b(b)(4)(C) in future cases, the Commission would have to determine whether the persons solicited share a "similar political philosophy" with the soliciting corporation. However, the District of Columbia Circuit has held that the Commission should not even pose questions regarding a person's political philosophy. *Jones* v. *Unknown Agents of the FEC*, 613 F.2d 864, 878-80 (D.C. Cir. 1979), *cert. denied*, 444 U.S. 1074 (1980); *Committee to Elect Lyndon LaRouche* v. *FEC*, 613 F.2d 834, 848 n.23 (D.C. Cir. 1979), *cert. denied*, 444 U.S. 1074 (1980). The court of appeals' decision thus "create[s] a large and undefinable exception to the statute." *International Longshoremen's Assn.* v. *Allied International*, ___ U.S. ___, 102 S. Ct. 1656, 1664 (April 20, 1982.)

they represent—their members—and reaffirm[ ] the intent of the 1971 Congress that corporations must also confine their activities to a roughly comparable group—namely, stockholders and executive officers." H.R. Rep. No. 917, 94th Cong., 2d Sess. 7 (1976), *1976 Legis. Hist.* at 807. Senator Allen introduced the amendment which became Section 441b(b)(4)(C) on the floor of the Senate, with the express purpose of putting nonstock membership corporations on equal footing with stock corporations and unions by permitting them to solicit political contributions to their separate segregated funds from their own roughly comparable constituency—their members. Senator Allen carefully explained the limited purpose of his amendment:

> What it does is to allow a membership corporation or a corporation without capital stock but with membership, . . . to set up a separate segregated fund.
>
> * * *
>
> Mr. President, all this amendment does is to cure an omission in the bill. It would allow corporations that do not have stock but have a membership organization, such as a cooperative or other corporation without capital stock and, hence, without stockholders, to set up separate segregated political funds as to which it can solicit contributions from its membership; since it does not have any stockholders to solicit, it should be allowed to solicit its members. That is all that amendement provides. It does cover an omission in the bill that I believe all agree should be filled.

122 Cong. Rec. S3811, S3812 (daily ed. Mar. 18, 1976), *1976 Legis. Hist.* at 463, 464. Senator Allen was concerned that without such an amendment, it was "entirely likely that membership corporations, corporations that have members but do not have stockholders, could not set up segregated funds as are permitted to corporations with stockholders and stock." 122 Cong. Rec. S3810 (daily ed. Mar 18, 1976), *1976 Legis. Hist.* at 462. With no

further discussion, the amendment was adopted, 122 Cong. Rec. S3812 (daily ed. Mar. 18, 1976), *1976 Legis. Hist.* at 464, and was included in the Conference Report.[38] As the district court concluded, Pet. App. 37a,

> These remarks confirm what the face of the statute itself indicates; that in enacting the membership exception Congress intended to allow corporations

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[38] During Senator Cannon's explanation of the Conference Report, he and Senator Allen engaged in a colloquy about the intent of this provision:

> SEN. ALLEN: . . . [I]f the members of such an organization, who, not being stockholders, still make up the corporation, would solicitations by such an organization of its members fall into the first category that I enumerated as to who may be solicited?
>
> SEN. CANNON: Yes, the Senator is correct . . . So any type of organization that had members, though not categorized as stockholders, and so on, would be covered under that provision. . . .
>
> * * *
>
> SEN. ALLEN: So a membership corporation such as a State Farm Bureau Federation, the Grange, or the National Farmers Organization could solicit their members?
>
> SEN. CANNON: Yes. If they are corporations they could solicit their membership.
>
> * * *
>
> SEN. ALLEN: Any mutual life insurance company would be able to solicit its policy holders since they are the group that make up the corporation?
>
> SEN. CANNON: If the policyholders are members within the definition of that type of an organization, then they could be solicited under that provision of the law.

122 Cong. Rec. S6477-78 (daily ed. May 4, 1976), *1976 Legis. Hist.* at 1107-1108.

without stock and membership organizations to solicit persons analogous to shareholders. There was no intent to create a loophole for mass solicitation based on purely philosophical affinity; only a desire to treat equitably organizations which do not fall neatly into the pre-existing union or stock corporation categories.

Section 441b does not attempt to dictate how the corporations it regulates should be organized; that is a matter of the organic state law under which they are created. Thus, Congress did not define the term "member" in the statute, and the Commission's regulation [39] explicitly leaves it to the corporation or union to establish its own membership requirements. [40]

Thus, Section 441b(b)(4)(C) was clearly intended to apply only to actual membership corporations. As the Commission has stated, the statute and the Commission's regulation assume that the corporate documents empower the corporation to operate as a membership organization, that there actually are standards which individuals

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[39] FEC Regulations, 11 CFR § 114.1(e) states:

"Members" means all persons who are currently satisfying the requirements for membership in a membership organization, trade association, cooperative, or corporation without capital stock and in the case of a labor organization, persons who are currently satisfying the requirements for membership in a local, national, or international labor organization. Members of a local union are considered to be members of any national or international union of which the local union is a part and of any federation with which the local, national or international union is affiliated. A person is not considered a member under this definition if the only requirement for membership is a contribution to a separate segregated fund.

[40] Similarly, Senator Cannon explained that the 1976 Conference Committee had deleted a proposed definition of "stockholder" with the intention of "leaving the interpretation of this term to general corporate law." 122 Cong. Rec. S6365 (daily ed. May 3, 1976), *1976 Legis. Hist.* at 1091.

must fulfill to become members, and that members have rights and obligations within the corporation comparable to those of stockholders and union members. AO 1977-67, 1 Fed. Elec. Camp. Fin. Guide (CCH) ¶ 5326 at 10,302 (June 28, 1978). [11] Unlike the court of appeals' decision the Commission's application of Section 441b(b)(4)(C) is premised upon the limited congressional intent in that provision to put membership corporations on an equal footing with stock corporations and unions, and reflects the common understanding of the concept of membership in a private, voluntary association.

First, the Commission has determined that to fall within Section 441b(b)(4)(C) the corporation's charter must not preclude it from having members. AO 1977-67, 1 Fed. Elec. Camp. Fin. Guide (CCH) at 10,302; AO 1976-79, 1 Fed. Elec. Camp. Fin. Guide (CCH) ¶ 5308 (April 14, 1978). This does not mean, as the court of appeals suggested, Pet. App. 5a-6a, that the Commission believes that State law controls the definition of "member" under Section 441b(b)(4)(C). But it is a fundamental principle of corporate law that the corporate charter defines the character of the corporation and the limits of its powers. [12] It is

[11] The Commission's advisory opinion procedure is set out at 2 U.S.C. § 437f. In 1979, Congress broadened § 437f from its original provision to permit any "person" to obtain an advisory opinion from the Commission with respect to a "specific transaction or activity by the person." 2 U.S.C. § 437f(a)(1). *Compare Buckley v. Valeo*, 424 U.S. at 110. The advisory opinion process provides an opportunity "to reduce uncertainty or narrow the statute's reach and . . . can be pursued at little risk to the rights asserted . . . ." *Martin Tractor Co. v. FEC*, 627 F.2d 375, 386 (D.C. Cir.), *cert. denied*, 449 U.S. 954 (1980).

[12] "[N]o corporation has authority to go beyond the limits of its charter." *Yonkers v. Downey*, 309 U.S. 590, 597 (1940). "Being the mere creature of law it possesses only those properties which the charter of its creation confers upon it, either expressly, or as incidental to its very existence." *Dartmouth College v. Woodward*, 17

for this reason that the Commission looks first to the corporation's charter itself, not to state law, to determine whether the corporation has empowered itself to operate as a membership organization. As discussed *supra*, p. 41, nothing in the Act affects the right of the organizers of a corporation to draft their articles of incorporation as they see fit. But if they choose to organize a nonmembership corporation, it will not fall within the Act's special provisions for membership corporations. *Cf. Hunt* v. *Washington Apple Advertising Commission*, 432 U.S. 333, 342, 344-345 (1977) (an organization established without formal membership was not a "traditional voluntary membership organization," even though the businesses whose interests it represented "possess[ed] all of the indicia of membership in an organization").

Second, the Commission has concluded that "a person can only be considered a member of an organization if he or she knowingly has taken some affirmative steps to become a member of the organization." AO 1977-67, 1 Fed. Elec. Camp. Fin. Guide (CCH) at 10,302. This

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U.S. (4 Wheat.) 518, 636 (1819). Thus, a "corporation is empowered to act not in general but only in accordance with the limited powers given to it by its articles of incorporation." *Elisian Guild, Inc. v. United States*, 412 F.2d 121, 123 (1st Cir. 1969). *See also Hale v. Henkel*, 201 U.S. 43, 74-75 (1906); *Wilson v. United States*, 221 U.S. 361, 383 (1971); *Harrison v. Barker Annuity Fund*, 90 F.2d 286 (7th Cir. 1937). Furthermore, corporate charters are not to be liberally construed. *In re Gilchrist Co.*, 278 F. 235, 241 (D.C. Mass. 1922). Thus, in those situations where there is any question in determining what powers are conferred upon the corporation by its charter, the rule of construction is that the charter is to be construed more strictly against the corporation and in favor of the public. *National Right to Work Legal Defense and Education Foundation, Inc. v. United States*, 487 F. Supp. 801, 807-808 (E.D. N.C. 1979); 7A W. Fletcher, *Cyclopedia of the Law of Private Corporations* § 3646 (rev. perm. ed. 1978).

requirement that individuals voluntarily decide to join an organization before being treated as a member merely incorporates "the law which normally is reflected in our free institutions—the right of the individual to join or to resign from associations, as he sees fit. . . ." *Booster Lodge #405, International Assn. of Machinists* v. *NLRB*, 412 U.S. 84, 88 (1973), *quoting NLRB* v. *Textile Workers Union*, 409 U.S. 213, 216 (1972). Thus, membership in organizations has long been treated by the courts as a voluntary, contractual relationship based upon the terms of the governing documents of the organization. *See NLRB* v. *Allis-Chalmers Mfg. Co.*, 388 U.S. at 183, 192; *NLRB* v. *Boeing Co.*, 412 U.S. 67, 75 (1973). *Cf. Gonzalez* v. *Archbishop*, 280 U.S. 1, 16-17 (1929).

Finally, the Commission has determined that a *bona fide* membership relationship must exist between the corporation and the individuals it claims as members, which is comparable to the fiduciary relationship between a corporation and its shareholders or a union and its members which led Congress to permit such organizations to have separate segregated funds. *See* pp. 26-27, *supra*. [13] Such a relationship "must be evidenced by the existence of rights and obligations vis-a-vis the corporation." AO 1977-67, 1 Fed. Elec. Camp. Fin. Guide (CCH)

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[13] Technically, shareholders own the corporation. While union members do not "own" their union in the same technical sense, there is more than a kernel of truth in describing members as "owners," the union membership resembles a corporation's stockholders in that *each group is the source of legitimacy and power for the organization's management and leadership*. Thus, it follows that Congress would consider sound the analogy: union members are to their union as shareholders are to their corporation.

IAM v. FEC, 2 Fed. Elec. Camp. Fin. Guide (CCH) at 51,285 (emphasis added).

at 10,302, *citing* 117 Cong. Rec. 43,380 (1971), *1971 Legis. Hist.* at 758. *See also* AO 1979-69, 1 Fed. Elec. Camp. Fin. Guide (CCH) ¶ 5488 (May 13, 1980); AO 1982-12, 1 Fed. Elec. Camp. Fin. Guide (CCH) ¶ ____ (April 9, 1982). As the district court described it, a *bona fide* membership relationship "assumes some right to participate in the organization's direction, as well as an obligation to help support the organization through regular financial contributions." Pet. App. 38a. *See Hunt* v. *Washington Apple Advertising Commission*, 432 U.S. at 344-345 ("indicia of membership in an organization" include the right to elect the members of the organization's controlling body, the right to be elected to serve on the organization's controlling body, and the obligation to help finance the organization's activities through assessments); *Health Research Group* v. *Kennedy*, 82 F.R.D. 21, 27 (D.D.C. 1979).

This Court recently confirmed that the Commission's interpretation of the Act is entitled to deference from the courts. *FEC* v. *Democratic Senatorial Campaign Committee*, ____ U.S. ____, 102 S.Ct. 38, 45 (Nov. 10, 1981).[44] Deference is particularly appropriate where, as here, the agency's determination involves a "definition of status" of particular parties under the statute it administers. *Iron Workers* v. *Perko*, 373 U.S. 701, 706 (1963). *See also Bayside Enterprises, Inc.* v. *NLRB*, 429 U.S. 298, 302-

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[44] The Court observed:

> [T]he Commission is precisely the type of agency to which deference should presumptively be afforded. Congress has vested the Commission with "primary and substantial responsibility for administering and enforcing the Act," . . . It is authorized to "formulate general policy with respect to the administration of this Act," . . . and has the "sole discretionary power" to determine in the first instance whether or not a civil violation of the Act has occurred.

FEC v. DSCC, 102 S.Ct. at 45 (citations omitted).

304 (1977). Accordingly, courts must accept the Commission's interpretation of the Act so long as it is "reasonably defensible," even if the court might "prefer another view of the statute." *Ford Motor Co.* v. *NLRB*, 441 U.S. 488, 497 (1979). *Accord*, *FEC* v. *DSCC*, 102 S.Ct. at 46; *Ford Motor Credit Co.* v. *Milhollin*, 444 U.S. 555, 565 (1980) (agency's construction of the statute it enforces is "dispositive" unless it is "demonstrably irrational"); *DSCC* v. *FEC*, 660 F.2d 773, 782 n.2 (D.C. Cir. 1980) (Wilkey, J., dissenting), *rev'd*, ___ U.S. ___, 102 S.Ct. 38 (Nov. 10, 1981). If the Court sustains any one of the three requirements which the Commission has developed for identifying an organization's "members" under the Act, the court of appeals' decision will have to be reversed. For the district court's uncontested factual findings clearly establish that NRWC does not meet any of these requirements.

First, as discussed *supra*, pp. 2-3, not only do NRWC's articles of incorporation fail to grant it the power to have members, they affirmatively provide that NRWC "shall not have members." The district court found that "NRWC was deliberately organized without members to avoid compliance with requirements imposed on *bona fide* membership corporations." Pet. App. 42a. [45] But "[w]hatever may have been [NRWC's] reason for doing it this way, it must live with the consequences. It cannot claim an [exemption] based on a condition which it itself sought

[45] Virginia law requires membership corporations to hold an annual meeting of members, which NRWC considered to be "prohibitively expensive." Pet. App. 42a n.32. But the court of appeals was wrong in thinking that NRWC only called itself a non-membership organization to avoid these state law requirements, for NRWC claimed non-membership status for purposes of federal tax law as well. *See* p. 3 n.3, *supra*.

to avoid." *Williams* v. *Eastside Mental Health Center, Inc.*, 669 F.2d 671, 678 (11th Cir. 1982).

Second, none of the hundreds of thousands of individuals NRWC claims as members had any opportunity to make a knowing decision whether or not to become a member. As shown *supra*, pp. 3-5, NRWC regularly mails letters to millions of corporations and individuals, which say nothing about becoming a member of NRWC, but merely request the recipient to answer a questionnaire on compulsory unionism and to send a contribution to help publicize the results of the survey, or to publicize NRWC's stand against compulsory unionism. Nevertheless, NRWC places the names of anyone who responds to this appeal on its list of "active members," and the names of anyone who merely returns a questionnaire with responses acceptable to the corporation's president on its list of "supporting members," even though no one is informed that such a response will result in membership. The only way such an individual can have his or her name removed from NRWC's membership list is to affirmatively return the unsolicited membership card to NRWC and ask to be removed from the membership rolls, although the solicitees are never informed of this option either. This program of inducting individuals into membership without their prior knowledge or consent is the antithesis of the free and voluntary contractual relationship which membership in a private organization has traditionally been thought to entail.

Finally, the relationship between NRWC and the individuals it claims as members is in no way comparable to the fiduciary relationship involved in corporations and unions, and includes none of the traditional indicia of membership identified by this Court in *Hunt* v. *Washington Apple Advertising Commission*, 432 U.S. at 344-345. NRWC's board of directors is self-perpetuating, and the

individuals on NRWC's membership lists have no right to participate in selecting officers or directors. J.A. 67. The "members" have no right to influence NRWC's policies or activities; there is nothing in the minutes of NRWC's Board of Directors or Executive Committee meetings to indicate that either of them ever even discussed the results of the periodic questionnaire surveys. Finally, NRWC has no dues structure—in fact "supporting members" need never have given money to NRWC at all. In short, unlike stockholders and union members, the individuals on NRWC's membership lists are not "the source of legitimacy and power for the organizations' management and leadership," *IAM* v. *FEC*, 2 Fed. Elec. Camp. Fin. Guide (CCH) at 51,285, and the corporation has nothing comparable to a fiduciary relationship to those individuals. As the district court concluded, Pet. App. 40a,

> [NRWC's] supporters do not possess any of the attributes of membership which could bring them within the exception. They clearly are not analogous to shareholders or union members. Although NRWC is funded by supporters, there is no obligation to contribute regularly. In fact, one can become and remain a member without contributing at all. Nor do NRWC's supporters exercise any control over the corporation's policy or management, other than in a highly indirect manner by refusing to contribute or by responding to an occasional questionnaire. In short the supporters possess none of the basic criteria of membership in an organization. The membership exception is simply unavailable to NRWC and ERCC.

NRWC's operation does not resemble a *bona fide* membership program so much as an effective direct mail solicitation scheme. NRWC buys and rents mailing lists and sends initial solicitation letters indiscriminately to millions of households and corporations. Those who re-

spond to the initial solicitation are placed on NRWC's mailing list for regular solicitations (which NRWC calls its membership list). NRWC then solicits political contributions to its separate segregated fund from individuals on this refined list, which merely represents all those individuals identified in the prior solicitations as being likely to respond to NRWC's appeal. If permitted to stand, the court of appeals' decision validating this procedure could pave the way for corporations and unions to fully subsidize and control political committees which solicit support from broad segments of the public, contrary to this Court's decision in *California Medical Assn.* v. *FEC*, *supra*. Such a result would "undermine the very purpose of the Act's restriction on the use of corporate treasuries in federal elections." *Bread Political Action Committee* v. *FEC*, 635 F.2d at 628.

CONCLUSION

The decision of the court of appeals should be reversed, and the case should be remanded with instructions to affirm the district court's decision.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

FEDERAL ELECTION COMMISSION, *et al.*,
Petitioners,

v.

NATIONAL RIGHT TO WORK COMMITTEE, *et al.*,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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COUNTERSTATEMENT OF QUESTION PRESENTED

Whether the court of appeals was correct in holding that the National Right to Work Committee, a non-stock, not-for-profit corporation, may solicit its members, who share the Committee's philosophy of voluntary unionism and who have evidenced a willingness to promote that philosophy through support of the Committee, for political contributions in accordance with 2 U.S.C. § 441b(b)(4)(C) of the Federal Election Campaign Act of 1971, as amended.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

No. 81-1506

FEDERAL ELECTION COMMISSION, *et al.*,
Petitioners,

v.

NATIONAL RIGHT TO WORK COMMITTEE, *et al.*,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR RESPONDENTS

COUNTERSTATEMENT OF THE CASE

The National Right to Work Committee ("NRWC") is a nonprofit, social welfare corporation without capital stock, exempt from Federal income taxation under § 501 (c)(4) of the Internal Revenue Code. 26 U.S.C. § 501(c)(4); Joint Appendix ("J.A.") 30. In 1978, it had approximately 1.25 million members. J.A. 63. NRWC was formed to educate the public on and to advocate voluntary unionism. To this end, NRWC conducts a continuous and extensive program of advocacy through the dissemination of information on compulsory unionism to its members and to the general public.

The Employee Rights Campaign Committee ("ERCC") is NRWC's separate segregated political fund organized and maintained pursuant to 2 U.S.C. § 441b(b)(2)(C) to

receive and extend funds on behalf of federal candidates, and it is registered as such with the Federal Election Commission ("FEC").

NRWC was first founded in 1955 and first incorporated in 1960. J.A. 30. NRWC reincorporated in 1975 in Virginia, and for purposes of state law, its Virginia articles of incorporation state that it shall not have members. J.A. 31. At least as early as 1960, NRWC recognized members and granted them privileges, and it continues to do so. J.A. 96. Thus, for at least fifteen years prior to the effective date of the Federal Election Campaign Act, as amended in 1976, 2 U.S.C. § 431, *et seq.* (the "FECA"), NRWC had recognized members.[1]

On January 6, 1976, ERCC requested an advisory opinion from the FEC to determine whether NRWC and ERCC could lawfully solicit NRWC's members for contributions to ERCC. J.A. 32-34. On three occasions in 1976, the first occurring on May 7, 1976, ERCC mailed solicitations to members of NRWC. J.A. 36, 38. ERCC received $77,616.87 in contributions, J.A. 38, from over 6,000 individuals. On September 27, 1976, the FEC issued a draft advisory opinion which would have allowed NRWC to make a showing that it had members "based upon their substantial involvement with NRWC activities." Joint Appendix submitted to the court of appeals ("Ct. App. J.A.") 276-78. However, this draft was never adopted; instead, on April 14, 1978—after a delay of twenty-six months—the FEC issued an adverse advisory opinion in response to ERCC's request. A.O. 1976-79, 1 Fed. Elec. Camp. Fin. Guide (CCH) ¶ 5,308.

On October 21, 1976, a complaint was filed with the FEC charging that ERCC solicited individuals who were not members of NRWC. J.A. 43. Six days later, the FEC noti-

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[1] NRWC has corporate and individual members, but no issue is presented in this case of an attempt to circumvent the prohibition of corporate contributions to candidates and political committees. The FEC erroneously suggests the contrary at p. 6, n.8, of its

fied ERCC that it had found reason to believe a violation had occurred and requested NRWC's articles. J.A. 46. NRWC submitted the articles promptly, and ceased all solicitation activity, as soon as it was informed of the possible violation of the Act. *Id.*

Six months later, on April 22, 1977, the FEC notified NRWC and ERCC that it had found reasonable cause to believe a violation had occurred, thus commencing the statutorily mandated conciliation process. J.A. 48.

Although the FEC had failed to answer ERCC's pending advisory opinion request, the FEC determined on October 5, 1977, that there was probable cause to believe that NRWC and ERCC had violated the FECA. J.A. 49. Two weeks later, NRWC and ERCC filed Civil Action No. 77-786-A in the United States District Court for the Eastern District of Virginia, seeking declaratory and injunctive relief. *Id.* Two months after NRWC and ERCC filed suit, the FEC filed Civil Action No. 77-2175 in the United States District Court for the District of Columbia. *Id.* The cases were consolidated in the District of Columbia.

In the district court, the FEC and NRWC stipulated that NRWC maintains standards that are applied by NRWC to determine when a person is considered a member. J.A. 53-67. "[S]tandards regarding responses required by NRWC for membership are established by the President of NRWC." J.A. 58. The President establishes the standards in accord with NRWC's Board of Directors. J.A. 96.

Brief for Petitioners ("Pet. Br."), where it states that NRWC "was unable to determine from its records which of its contributors were corporations and which were individuals." The fact referred to by the FEC applies only to contributions to NRWC's *general treasury* and does *not* apply to *contributions to ERCC*. ERCC has maintained meticulously the contributor records required by the FECA and has filed all required disclosure reports with the FEC. J.A. 61. There is not a shred of evidence in the record to support this novel suggestion by the FEC.

NRWC attracts members by publicizing its position on issues relating to compulsory unionism through advertisements, personal contacts, and letters. The primary mechanism is the use of letters which describe the purpose of the organization, ask the recipient to respond to a questionnaire that will determine whether the person agrees with Right-to-Work principles, request financial support, and urge the recipient to join NRWC's activities by taking some requested action, such as communicating with legislators in support of, or in opposition to, pending legislation.

The membership procedure, generally, is as follows: a person must receive an initial NRWC mailing that describes abuses of compulsory unionism and requests that the recipient join in opposing such abuses, J.A. 54-56, 102-153; that person must complete an enclosed survey questionnaire in accordance with NRWC criteria and return the questionnaire to NRWC, J.A. 58; the questionnaire asks the recipient's views on issues of public policy related to compulsory unionism, J.A. 55, 124-25; those who answer the questionnaire in accordance with NRWC criteria are considered supporting members, J.A. 59; those who also send a contribution are sent active membership cards, J.A. 59, 215; thereafter, NRWC considers such persons to be members until notified to the contrary, J.A. 59, 218-19; members are sent renewal notices on the approximate anniversary of the initial date of membership, J.A. 60, 216-17.

NRWC sends its members "monthly newsletters, periodic reports, and special action reports, detailing NRWC's current activities and asking the members to take legislative action efforts." J.A. 60, 154-213. A review of samples of these materials makes clear the detailed nature of the reports and the ample opportunities for participation which NRWC provides its members. The wealth of materials which NRWC sends to its members demonstrates that NRWC strives to ensure that its members will have current knowledge of "state and federal legislative de-

velopments and the tactics of the proponents of compulsory unionism." (*Id.*)[2]

NRWC's membership mailings, about which the FEC has complained in this case, constitute the medium through which NRWC strives to keep its members informed and active. Furthermore, the solicitation material used by NRWC and ERCC, which underlies the case at bar, was sent *solely* to NRWC's active members, and *not* to the general public. Text of letter referred to as JSF #37, J.A. 47.

NRWC's membership program provides firm ground on which to distinguish NRWC's members from the general public. For example, in the three-week period of late December 1977 to mid-January 1978, eight million copies of an initial recruitment letter were sent, J.A. 55, while during the entire two-year period of 1977-78, during which many more recruitment letters were sent, NRWC had a net membership increase of only 813,276. J.A. 62. It is only the additional 813,276 members that NRWC and ERCC seek to solicit for political contributions under § 441b(b)(4)(C), not the millions of recipients of initial recruitment letters.

The court of appeals concluded that "[t]he NRWC operation . . . ensures that NRWC accurately identifies and solicits only those individuals who share a similar political philosophy and who have evidenced a willingness to promote that philosophy through support of the Committee." Based upon these facts, therefore, "the term 'members'

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[2] The FEC asserts that "the only documents in which this 'membership' system is set out is a letter which NRWC's counsel sent to the Commission during this litigation." Pet. Br. 4, n.5. This is an error which permits the FEC to imply that NRWC's membership structure was constructed after the administrative complaint was filed, and then only to escape responsibility under the FECA.

A more careful review of the record demonstrates that ERCC's advisory opinion request submitted to the FEC on January 6, 1976, before any solicitations were made and before any complaint was filed, accurately described NRWC's two classes of members. J.A. 32, 33. This is a fact to which the FEC has stipulated.

in § 441b(b)(4)(C) embraces at least those individuals whom NRWC describes as its active and supporting members . . . ." Appendix to Petition for a *Writ of Certiorari* ("Pet. App.") 10a.

ADMINISTRATIVE PROCEEDINGS

In order to appreciate fully the restrictions placed upon the political participation of NRWC and its members, it is necessary to view the chain of events from a chronological perspective. The following is a summary of the most significant dates and events leading up to the cross-filing of civil actions.

A. The Advisory Opinion Process

ERCC requested an advisory opinion from the FEC on January 6, 1976. J.A. 32. The statute at that time, former 18 U.S.C. § 610, Appendix ("App.") 60a, did not restrict the scope of solicitation rights. On September 27, 1976, the FEC issued a favorable draft advisory opinion which was never adopted. On January 30, 1976, this Court declared parts of the FECA unconstitutional. *Buckley* v. *Valeo*, 424 U.S. 1, 140-3 (1976). Regulations defining the term members did not exist at this time. J.A. 48. All of ERCC's solicitations took place between May and September 1976. J.A. 36, 38. On October 21, 1976, a complaint was filed charging that NRWC had violated the FECA by soliciting persons who were not members of NRWC. J.A. 43. The complaint quoted corporate documents of NRWC. Ct. App. J.A. 287-88. By letter dated March 2, 1977, the FEC informed NRWC that it would not issue the requested advisory opinion. J.A. 47. Only after repeated demands by ERCC did the FEC respond, on April 14, 1978, by issuing Advisory Opinion 1976-79. 1 Fed. Elec. Camp. Fin. Guide (CCH) ¶ 5,308.

Two years and three months elapsed between the time ERCC requested the advisory opinion and the time the

FEC issued that opinion. Part of the delay may have been due to the *Buckley* decision, as argued by the FEC in the courts below, but the FEC was reconstituted May 11, 1976, when the Federal Election Campaign Act Amendments of 1976, Pub. L. 94-283, 90 Stat. 501, were signed into law. One year and ten months elapsed after the reconstitution of the FEC before the FEC informed NRWC that state corporate law would be dispositive in the negative, and that because of its articles, NRWC could not solicit its members.

B. The Conciliation Process

The conciliation process was a continuation of the uncertainty generated during the advisory opinion process.

As stated above, the FEC was notified of the contents of NRWC's articles of incorporation on October 21, 1976. Working until between 1:00 and 3:00 the next morning, FEC staff member, Ms. Sherry Swirsky, a legal assistant, prepared a "General Counsel's Report" recommending that the FEC find reasonable cause to believe a violation had occurred. J.A. 44. On October 27, 1976, the FEC adopted that report. J.A. 46.

Rather than issue AO 1976-79 at this time, the FEC notified ERCC of its reason to believe finding and requested answers to certain interrogatories, including the production of "all documents relating to the corporate structure of your sponsor." Ct. App. J.A. 295. NRWC and ERCC immediately ceased all solicitation activities. J.A. 46. Nine days later, ERCC submitted, *inter alia*, NRWC's articles of incorporation. J.A. 46. The articles could not have been considered dispositive in the negative at that time because two and one-half months later, by letter dated January 31, 1977, the FEC requested additional information concerning the "requirements, rights and privileges of membership in the National Right to Work Committee." Ct. App. J.A. 298. It was not until April 21, 1977, five and one-half

months after ERCC submitted NRWC's articles to the FEC, that the FEC found reasonable cause to believe that NRWC and ERCC had violated § 441b(b)(4)(A)(i), which finding commenced the conciliation process. J.A. 48.

The FEC has acknowledged that the resulting conciliation failed, and has argued that "a statutory mandate to 'endeavor' to conciliate [was] not a mandate to settle, thus both the FEC and NRWC had the right to reject any proposed conciliation agreement." FEC's Court of Appeals Brief ("Appellee's Brief") 11 and 48, n. 55. While neither party may have had any duty to resolve this matter, certainly persons seeking to exercise First Amendment rights of association have a right to expect, at a minimum, that the governmental agency with which they are dealing specify requirements which can be met to end the matter and permit the renewal of operations. Instead, the FEC has barricaded itself behind NRWC's Virginia articles of incorporation throughout this litigation, and has avoided the core problem of defining the terms member and membership organization.

The articles of incorporation were not what caused the impasse during conciliation. NRWC offered in writing to amend its articles. *See,* NRWC and ERCC's counterproposal for conciliation, dated May 13, 1977. Ct. App. J.A. 320, 322.[3]

The failure of conciliation was caused directly and unmistakeably by the FEC's action in demanding that NRWC, in addition to amending its articles of incorporation, "take all other steps which are necessary and proper to become a membership organization," Ct. App. J.A. 318, while refusing then, as it refuses now, to define such "other steps". By letter dated May 13, 1977, four days after the FEC first proposed such a requirement, NRWC and ERCC objected to this undefined requirement. Ct. App. J.A. 319, 320.

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[3] In the court of appeals, the FEC erroneously represented that NRWC "refuse[d] to amend its articles . . . ." Appellee's Brief at 33, n.33.

It is important to note, as well, that although the FEC, on May 9, 1977, insisted that NRWC agree to take undefined "other steps" as the price of conciliation, FEC Assistant General Counsel David Spiegel, on August 8, 1977, three months later, informed NRWC and ERCC that the FEC's concept of membership was not within the scope of conciliation. Ct. App. J.A. 329-31. Also, on March 2, 1977, the FEC informed ERCC that a response to ERCC's advisory opinion request was not appropriate during a compliance proceeding, and that "future disposition of the compliance matter will obviate any need for responding further to [ERCC's] advisory opinion request." J.A. 47.

SUMMARY OF ARGUMENT

I.

This Court has consistently upheld the right of citizens to associate with others for the common advancement of political beliefs and ideas, including supporting candidates of one's choice. Any governmental action that may have the effect of curtailing that freedom is subject to the closest scrutiny.

NRWC's members adhere to the same political idea and seek to promote that commonly held belief using NRWC as the means. ERCC is simply the extension of that association into the the political arena.

NRWC's active members contribute financially to NRWC; therefore, they are *ipso facto* members for constitutional purposes. *Buckley*, 424 U.S. at 66. No adverse decision can be sustained with respect to alleged past violations because only active members were solicited in 1976.

First Amendment associational rights do not depend on financial ability. *Buckley*, 424 U.S. at 49. Thus, NRWC's supporting members also satisfy the constitutional test and should fall within the class of persons that can be solicited by NRWC.

The FEC's interference with the associational rights of NRWC and its members, which results not from the language of the statute and regulation but from the FEC's interpretation of them, is unsupported by any compelling interest. *Buckley* identified only one interest compelling enough to sustain a restriction on associational rights: the *"quid pro quo"* arrangement in which contributions to candidates or their agents create the appearance or actuality of corruption. 424 U.S. at 26-27, 48.

This principle has been applied to sustain convictions for using corporate or union treasury funds to make contributions to a candidate, or to make expenditures at the request of a candidate for activities directed to the general public; however, this Court has refused to apply any such restrictions to internal communications. *United States* v. *Congress of Industrial Organizations*, 335 U.S. 106 (1948).

NRWC's members voluntarily associated with NRWC, and its active members voluntarily contributed to NRWC, before ERCC solicited them. By virtue of this association, NRWC's members are distinguishable from the general public and, thus, maintained a preexisting associational relationship with NRWC before ERCC solicited them.

The FECA contains provisions other than the solicitation restriction that prohibit the *quid pro quo* arrangements this Court has found to be corrupting. For example, there are limitations on contributions to candidates and committees. 2 U.S.C. § 441a(a)(1) and (2). Thus, means less restrictive than an absolute ban on the solicitation of NRWC's members are already part of the FECA, and a compelling interest cannot be shown to sustain the solicitation restriction.

The FECA does not define the term members. The regulations appear to. They adopt the standards used by an organization so long as they consist of more than the mere act of contributing to the PAC. 11 C.F.R. § 114.1(e); App. 62a. All of NRWC's members meet this criteria.

It is only the FEC's restrictive interpretation that infringes upon the associational rights of NRWC and its members; this restrictive interpretation is not supported by the statute or the legislative history.

A state corporate law test would result in 50 different standards being applied to the federal constitutional right of association. The FEC has taken the position that articles of incorporation are dispositive if they negate members for state corporate law purposes, but not if they provide for members for state corporate law purposes. The district court concluded that members must have "some right to participate in the organization's direction, as well as an obligation to help support the organization through regular financial contributions," but the Virginia Non-Stock Corporation Act, under which NRWC is incorporated, does not prescribe such requirements.

NRWC offered to amend its articles during conciliation, but the FEC refused to accept that offer unless NRWC agreed to take undefined "other steps" to become a membership organization. In Advisory Opinion 1977-67, from which two Commissioners dissented and one concurred only in the result, the FEC did not accept as dispositive an organization's Virginia articles that set forth the classes of members. Instead, the FEC looked behind the articles for other undefined criteria to be applied on an *ad hoc* basis.

Further, as the court of appeals noted, state corporate laws, which vary significantly from state to state, are not likely to take into account the associational rights at issue in this case. Thus, a state corporate law test must be rejected.

The FEC argues that solicitation rights are derived from a fiduciary standard. This is not supported by the express language of the statute. For example, corporations owe no fiduciary duty to the families of administrative personnel, but they are allowed to solicit those families. On the other hand, FEC Advisory Opinion 1977-37 takes the posi-

tion that agency-fee-payors cannot be solicited as members of the labor organization, although a fiduciary duty is owed to such individuals. Thus, a fiduciary standard must be rejected.

II.

The legislative history demonstrates that some members of Congress, in both the House and Senate, tried to repeal FEC Advisory Opinion 1975-23 ("SUN-PAC"), which allowed corporations to use treasury funds to solicit employees as well as shareholders. The attempt failed. Thus, a bill that originally would have placed strict limitations on solicitation rights was gradually broadened to allow the solicitation of a person having a preexisting associational relationship with the organization, even if that relationship were as tangential as one based on family ties.

Although the majority of Congress recognized the constitutional implications of restricting solicitation rights, they failed to define the term members, which was inserted to guarantee the full enjoyment of solicitation rights by membership organizations, cooperatives, and non-stock corporations. The majority intended that a constitutional test apply, and they intended to allow solicitation rights coextensive with that test.

III.

The term members, as interpreted by the FEC and the district court, is unconstitutionally vague, facially and as applied, and has deterred the exercise of rights protected by the First Amendment. A statute is unconstitutionally vague where its language does not convey a sufficiently definite warning of proscribed conduct when measured by common understanding and practices. *Cramp* v. *Board of Public Instruction*, 368 U.S. 278, 287 (1961).

In the regular course of NRWC's membership operation, its members respond to issue surveys; contribute to NRWC; are asked to renew membership and contribute annually; receive membership cards; receive newsletters,

action alerts, and responses to individual requests for information; and are asked to communicate with their elected representatives. This nexus between member and organization rises far above the requirements of the statute and regulation, but it was unacceptable to the FEC.

The FEC itself has stated that it does not know what a member is. Yet, it has also stated that individuals whom NRWC considers its members are not members. From the FEC's interpretation of the statute and regulation, it is impossible to determine, in advance, those situations in which persons are to be considered members.

It is precisely the dilemma of being forced either to guess at the meaning of a prohibitory statute, or to avoid exercising First Amendment rights, that the due process clause of the Fifth Amendment does not allow.

IV.

A knowing and willful violation cannot be found unless the government shows a knowing, conscious, and deliberate flouting of the Act when the law is certain. *AFL-CIO* v. *Federal Election Commission*, 628 F.2d 97, 101 (1980), *cert. den.*, 449 U.S. 982 (1980).

The record shows that NRWC and ERCC attempted to comply with the FECA, but were unable to obtain advice from the FEC because of the uncertainty of the law. Their only willful act was seeking a definition of the term members that is consistent with the First Amendment. That definition has been enunciated by this Court in a long line of cases beginning with *N.A.A.C.P.* v. *Button*, 371 U.S. 415 (1963), but was not applied by the district court.

In view of the uncertainty of the law, and the view of this Court's holding that contributors and members are interchangeable for associational purposes, *Buckley*, 424 U.S. at 25, it was not unreasonable for NRWC and ERCC to assume they could solicit NRWC's active (i.e., contributing) members in 1976. In addition, the application of the

constitutional definition of members, which does not condition the extent of associational rights on financial ability, would permit the solicitation of NRWC's supporting (i.e., non-contributing) members.

ARGUMENT

I.

THE CONSTITUTIONAL DEFINITION OF MEMBERS, WHICH HAS BEEN DEVELOPED IN A LONG LINE OF FIRST AMENDMENT CASES, MUST BE APPLIED HERE.

A. Clarification of Issues

Before discussing the key issue in this litigation, it is necessary to clarify what Respondents do not contest.

The FEC devotes twenty-one pages of its brief, Pet. Br. 13-33, to establishing the authority of Congress to regulate the conduct of elections. NRWC and ERCC do not contest that congressional authority. ERCC, the separate segregated fund of NRWC, was established for the express purpose of complying with the regulatory scheme enacted by Congress.[4]

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[4] It has never been NRWC's position that § 441b does not apply to it, as the FEC suggests at Pet. Br. 37, n.36. The language of the statute clearly makes that section applicable to "any corporation whatever." NRWC is, and has been, at all times relevant to this litigation, a corporation. When it filed its advisory opinion request in January 1976, NRWC asked for advice on complying with § 441b. Early in this litigation, NRWC agreed that § 441b applied to it.

Neither does the court of appeals decision hold, as the FEC suggests, that § 441b does not apply to "some nonprofit corporations," Pet. Br. 37. Rather, the court of appeals held "that the term 'members' in § 441b(b)(4)(C) embraces at least those individuals whom NRWC describes as its active and supporting members, ..." Pet. App. 10a.

At Pet. Br. 15-29, the FEC explains that two compelling governmental interests support the regulatory scheme enacted by Congress: (1) the need to prevent the diversion of corporate and union general treasuries ("war chests") to the political (i.e., electoral) sphere; and (2) the need to prevent individuals from being forced to support political candidates they oppose.

There is, beyond a doubt, a need to prevent the political process from being corrupted and to prevent those who exercise control over other individuals' property from converting that property to their own political purposes without the consent of the owners. These governmental interests are not contested.

In *Pipefitters Local Union No. 562* v. *United States*, 407 U.S. 385 (1972), this Court identified these two compelling governmental interests by examining the legislative history of former 18 U.S.C. § 610. It was stated further, however, that Congress chose to insulate the electoral process from the "war chests" of "aggregated wealth" by requiring the establishment of a separate segregated fund (a "PAC"). *Id.*, at 414-16. NRWC satisfied this governmental interest by creating ERCC; therefore, the "war chest" theory is not at issue.

"Consent," that is, the "voluntariness" of contributions, was to be guaranteed by a solicitation scheme designed to inform the one solicited of the political purposes for which the contributions were sought and of the right not to contribute. *Pipefitters*, at 416. ERCC's solicitation letters certainly satisfied this test. They told the recipient that ERCC would support federal candidates who believed in Right-to-

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Furthermore, § 441b does not prohibit the use of corporate funds for solicitation when done in accordance with that section. Thus, there is no need for the FEC to characterize as a "bold assertion," Pet. Br. 37, NRWC's claim to solicitation rights under § 441b(b)(4)(C).

Work, and they requested a voluntary contribution. Joint Exhibit Binder submitted to district court, Tab 19. The letters were mailed to the recipients, so there was absolutely no pressure to contribute. Additionally, in view of NRWC's practice of continuing membership status from year-to-year until the member expressly terminates membership, there can be no serious charge that NRWC would have "retaliated" against those who did not contribute by expelling or otherwise censuring them. In short, NRWC and ERCC used the mechanism of solicitation intended by Congress to obtain uncoerced consent. Thus, the "consent" theory is not at issue.

The right of NRWC's members to contribute to ERCC is likewise not at issue because the FECA contains no prohibition on the right of individuals, irrespective of membership, to contribute to separate segregated funds such as ERCC. The central issue in this litigation is whether NRWC may solicit its active and supporting members for contributions to ERCC, its separate segregated fund.

B. NRWC And Its Members Are Engaged In The Exercise Of Associational Rights Protected By The First Amendment.

The FEC has carefully avoided discussing the key issue in this litigation: the constitutional standard of membership that has long been enunciated by this Court. *N.A.A.C.P.* v. *Button, supra,* at 431, quoted *Sweezy* v. *New Hampshire,* 354 U.S. 234, 250-251 (1957), and referred to *De Jonge* v. *Oregon,* 299 U.S. 353, 364-366 (1937), when declaring:

> Our form of government is built on the premise that every citizen shall have the right to engage in political expression and association. This right was enshrined in the First Amendment of the Bill of Rights. Exercise of these basic freedoms in America has traditionally been through the media of political associations. Any interference with the freedom of a party is simul-

> taneously an interference with the freedom of its adherents. All political ideas cannot and should not be channeled into the programs of our two major parties. History has amply proved the virtue of political activity by minority, dissident groups . . . .

The First Amendment guarantees "freedom to associate with others for the common advancement of political beliefs and ideas . . . ," *Kusper* v. *Pontikes*, 414 U.S. 51, 57 (1973); as well as freedom to solicit in support of a cause, *Village of Schaumburg* v. *Citizens for a Better Environment*, 444 U.S. 620 (1980), or as an exercise of one's religious beliefs, *Larson* v. *Valente*, 452 U.S. 904, 102 S. Ct. 1673 (1982). *Buckley, supra*, summarizes the law on this fundamental right:

> [T]he right of association is a "basic constitutional freedom," • • • that is "closely allied to freedom of speech and a right which, like free speech, lies at the foundation of a free society." • • • In view of the fundamental nature of the right to associate, governmental "action which may have the effect of curtailing the freedom to associate is subject to the closest scrutiny." • • • [citations omitted]
>
> • • •
>
> Our past decisions have not drawn fine lines between contributors and members but have treated them interchangeably. • • •

424 U.S. at 25, 66.

The Government has been held to violate an organization's associational rights when it interferes significantly with an activity which the organization needs in order for its protected purposes not to be frustrated. *Healy* v. *James*, 408 U.S. 169 (1972); *Brotherhood of Railroad Trainmen* v. *Virginia ex rel. Virginia State Bar*, 377 U.S. 1 (1964).

The use of the corporate form has been sanctioned as a proper vehicle for political association with specific reference to the National Association for the Advancement of

Colored People, a nonprofit corporation. *Buckley*, 424 U.S. at 15. *See, N.A.A.C.P.* v. *Alabama*, 357 U.S. 449, 451, 460 (1958).

A monetary contribution is not necessary, since First Amendment protection against governmental abridgement does not depend on financial ability. *Buckley*, 424 U.S. at 49.

When applied to the facts of this case, these decisions show that NRWC's active members are unequivocally entitled to constitutional protection because, in addition to having joined with NRWC to advance a commonly held idea, they have contributed financially to NRWC. *Buckley*, 424 U.S. at 66, has reaffirmed that members and contributors are treated interchangeably for constitutional purposes. Furthermore, NRWC's supporting members should not suffer a disparagement of their associational rights simply because of an artificially raised financial barrier. The First Amendment right of association is firmly grounded on the advancement of commonly held beliefs and not on financial ability.

By interfering with NRWC's internal activities, the Government severely limits the ability of NRWC and its members to associate in an effort to promote voluntary unionism. In fact, by denying ERCC the right to solicit NRWC's members, the FEC, in effect, abolishes ERCC by severing ERCC from its source of funds.

ERCC is the political arm by which NRWC and its members support candidates who agree with NRWC's principles and oppose candidates who disagree with NRWC's principles. As such, ERCC is the instrument by which NRWC and its members exercise the associational right to extend their efforts into the political (i.e., electoral) arena. The constitutional protection remains identical. Excessive and unnecessary interference with that fundamental right should not be tolerated.

C. The FEC's Abridgment Of The Associational Rights Of NRWC And Its Members Through A Restrictive Interpretation Of The Statute And Regulation Is Unsupported By A Compelling Governmental Interest.

In *Buckley*, only one governmental interest was identified as compelling enough to justify interfering with "the protected rights of political association": preventing the appearance or actuality of corruption which arises from large individual contributions to candidates or their agents, or "the *quid pro quo*" arrangement. *Buckley*, 424 U.S. at 26-27, 48.

This principle has been used to sustain convictions for using corporate or union treasury funds to contribute directly to candidates or to defray the expenses of a campaign program coordinated with a candidate. *United States* v. *Boyle*, 482 F.2d 755 (D.C. Cir. 1973), *cert. denied*, 414 U.S. 1076 (1973) (Boyle was convicted of making direct contributions to candidates from the union treasury); *FEC* v. *Weinsten*, 462 F. Supp. 243 (S.D.N.Y. 1978) (corporate treasury funds were funneled to a candidate through employees); *United States* v. *Chestnut*, 533 F.2d 40 (2d Cir. 1976) (corporate checks were drawn at the request of Senator Humphrey's campaign manager to pay for advertising).

On the other hand, the principle has never been applied to the internal communications of an organization. An indictment under former 18 U.S.C. § 610 was dismissed in *U.S.* v. *CIO*, *supra*, after this Court interpreted § 610 not to apply to an internal union publication supported by the union treasury, and thus did not reach the constitutional issue. In *Pipefitters*, *supra*, this Court construed § 610 to allow unions to form separate segregated funds for which voluntary contributions could be solicited, and again, did not reach the constitutional issue.

NRWC's solicitation effort in 1976 was an internal communication directed at a group clearly distinguishable from

the general public. Each person solicited for a contribution to ERCC had previously taken the voluntary, affirmative steps of returning a completed questionnaire and contributing to NRWC. While First Amendment associational rights do not depend on one's financial ability, certainly those who had contributed to NRWC prior to being solicited for contributions to ERCC were members of NRWC for constitutional purposes. Since only active members of NRWC were solicited for contributions to ERCC in 1976, there was no violation of § 441b(b)(4)(A)(i) in 1976 that can be sustained.

With respect to future solicitations, NRWC and ERCC are entitled to the decision made by the court of appeals that their relationship with NRWC's active and supporting members is protected from unnecessary governmental interference by the First Amendment right of association.[8]

D. A State Law Standard Must Be Rejected.

The FEC has taken the position that NRWC's articles of incorporation are dispositive of the membership issue in the negative, i.e., that a clause in the articles or bylaws expressly disavowing membership for state corporate law purposes conclusively establishes that there are no members for purposes of the FECA. Pet. Br. 42; Advisory Opinion 1976-79, 1 Fed. Elec. Camp. Fin. Guide (CCH)

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[8] Even assuming, *arguendo*, that the restrictive interpretation of the FEC does further the compelling governmental interests served by the statute, means less restrictive than an absolute ban on the solicitation of NRWC's members are already a part of the FECA, and they have been found to be constitutionally permissible for preventing the creation of undue influence through *quid pro quo* arrangements. ERCC, like all separate segregated political funds, is subject to the contribution limits of 2 U.S.C. § 441a; individuals who contribute to PACs, including ERCC, are subject to the contribution limit set by 2 U.S.C. § 441a(a)(1)(C); and § 441b prohibits a corporation from contributing to a PAC, and thus to ERCC.

¶ 5,308.* The FEC rejects the position, however, that state corporate law is dispositive in the positive, i.e., that articles expressly providing for membership for state corporate law purposes conclusively establish that there are members for FECA purposes. Pet. Br. 42; Advisory Opinion 1977-67, 1 Fed. Elec. Camp. Fin. Guide (CCH) ¶ 5,326.

A state law standard would result in at least 50 different standards being applied to the fundamental right of association. Some states impose extensive standards for membership on non-profit corporations. *See, e.g.,* Connecticut Non-Stock Corporation Act, Gen. Stat. Conn. §§ 33-458 to 472. Others impose none. *See, e.g.,* New Hampshire Voluntary Corporations and Associations, 27 N.H. Rev. Stat. § 292:1, *et seq.* Even those states that impose substantial requirements provide that the corporation may increase, limit, or deny any such rights. *See, e.g.,* Connecticut Non-Stock Corporation Act, Gen. Stat. Conn. § 33-460(a).

NRWC is incorporated under the Virginia Non-Stock Corporation Act. There is no requirement under the Virginia Act that members have "some right to participate in the organization's direction, as well as an obligation to help support the organization through regular financial contributions." *See,* Code of Va. §§ 13.1-201 to 229.

The question that must be answered in this regard is whether FEC requirements would be satisfied if NRWC amended its articles of incorporation to provide for members and adopted as the classes, the rights, and the obligations of those members the exact same criteria that NRWC now uses. If so, then state law would be the determinative standard, and the FEC would "know what a membership organization is." The FEC refused to accept the application of that standard during conciliation when it conditioned acceptance of NRWC's offer to amend its articles

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* This is the sole argument of the AFL-CIO in its Brief *Amicus Curiae.*

on the requirement that NRWC also "take all other steps which are necessary and proper to become a membership organization" while refusing to define such "other steps." *See* pp. 42-44, *infra*.[7]

The FEC did not accept a state law standard as dispositive in Advisory Opinion 1977-67, 1 Fed. Elec. Camp. Fin. Guide (CCH) ¶ 5,326, where the Virginia articles of Public Service Research Council ("PSRC") affirmatively provided for members.

The FEC admitted on January 19, 1978, one year and four months after NRWC mailed its last letters soliciting contributions to ERCC, that it did not know what constituted a membership organization.[8]

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[7] As the court of appeals noted:

> . . . [D]uring conciliation, NRWC offered to amend its articles of incorporation, but the FEC conditioned its acceptance of that offer on the requirement that NRWC take additional undefined "other steps" to become a membership organization. We are inclined to agree that the FEC has barricaded itself behind NRWC's articles of incorporation throughout this litigation and has avoided the core problem of defining the terms "member" and "membership organization."

Pet. App. 6a, n.5. The potential for abuse in defining these "other steps" cannot be overestimated, for it allows the FEC unfettered discretion to require membership organizations to conform to the FEC's own vague, imprecise, and shifting concepts. Thus, the FEC Regulation, which is clear on its face, is rendered meaningless by interpretation.

[8] Partial transcript of public meeting of the FEC:

> COMMISSIONER SPRINGER: What is it, do we have a cut and dried definition of membership organization?
>
> MR. LARRY NOBLE: Not at this point we don't. We know—
>
> COMMISSIONER SPRINGER: Do the regulations cover this?
>
> MR. LARRY NOBLE: It does cover it in the sense that we know what a membership organization is not.
>
> COMMISSIONER SPRINGER: Is not, but we do not know what one is.
>
> MR. LARRY NOBLE: That's correct, sir.

The FEC's predicament is of its own making, for a careful examination of the record coupled with an appreciation of the constitutionally guaranteed right of association would yield the only permissible result. Indeed, the FEC regulation, without the restrictive interpretation the FEC is attempting to graft upon it, reaches a proper balance between the fundamental right of association and the compelling governmental interest in regulating the electoral process. Section II, *infra*.

The district court erroneously concluded that membership

> denotes a formal relationship in which a person, whether specifically described as a member or not, has specified rights and obligations vis-a-vis an organization. In addition, "membership" assumes some right to participate in the organization's direction, as well as an obligation to help support the organization through regular financial contributions.

Pet. App. 38a. This standard is vague in itself. It refers to "some right," but does not specify "what right" must be held by a member. In addition, it speaks of an "obligation to help support the organization through regular financial contributions," but does not specify the degree of regularity, or the amount of support, that is required. For example, must members make weekly, monthly, yearly, biennial, decennial contributions, or contributions on some

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> COMMISSIONER SPRINGER: Now, are we able, by this letter to see if we can clarify this point. Bill knows this. Shouldn't we be able to say in the Regulations what a membership organization is?
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> GENERAL COUNSEL OLDAKER: The Commission did not. Now I think that the problem is that in any event, we won't have Regulations for at least another, uh, Regulations which have been amended for another four or five months so I think that in the interim this would be the only solution to handle this type of problem.

J.A. 51. In fact, the membership regulations have never been amended.

other periodic basis? How much financial support need be given? Is one prohibited from being a member if he is too poor to contribute financially, but in principle supports the purposes of the organization? It is commonly known that members of the Roman Catholic Church have no control whatsoever over doctrinal positions of that church. Nor do they "elect and control the governing board" of the Church. *See, Larson*, 102 S. Ct. at 1688.[9] Are they then not to be considered members? The district court opinion provides no guidance on these questions.[10]

The court of appeals correctly held that the mechanical application of a state law test, in this case as a threshhold indication, interposed a barrier to sensitive First Amendment rights, which is wholly unrelated to the interests the FECA is designed to promote:

> We see absolutely no justification for applying a state law standard. State definitions of "members" in non-stock corporations for purposes of state corporate or

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[9] *Larson* rejected the theory that a right to vote ensured actual membership control and direction of an organization, in the absence of actual proof on the record. Proof that a right to vote ensures actual control of an organization is absent from the record in this case, as well. Abridgment of the constitutional right of association cannot be predicated upon an unproven assumption made by the Government.

[10] Ignoring the vague standard embodied in the district court opinion, the FEC asserts that the court of appeals decision is "so vague as to be virtually unenforceable," and that the decision will force the FEC, unconstitutionally, to examine members' "political philosophy." Pet. Br. 38. The FEC need not question an organization's members on the sufficiency of their beliefs. That is essentially a private matter between the organization and its members. This claimed concern for the sensitivity of associational rights is belied by the fact that the FEC, operating under its interpretation of the statute and regulation, interrogated members of NRWC, in this litigation, on the adequacy of their beliefs and on their associations with other organizations. *See, infra*, p. 41, n.24.

> tax law are not likely to take into account the important First Amendment considerations at the heart of any controversy surrounding the construction or application of the Federal Election Campaign Act.

Pet. App. 5a.[11]

The court of appeals opinion recognizes the difficulties of effective advocacy encountered by organizations such as NRWC which are formed to promote a philosophy. In order to have the maximum effect in the marketplace of ideas, these organizations must avoid the needless dissipation of resources which would otherwise be occasioned by, for example, holding annual meetings of members, which state law might mandate for a traditional membership organization. Concomitantly, there is the need to involve members as frequently as possible in activities in furtherance of NRWC's purposes of promoting voluntary unionism as widely as possible. This can be done only by using contributed funds efficiently.[12]

The FECA regulates the conduct of all participants in federal elections, from whatever state, and wherever in-

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[11] Thus, the court of appeals recognized the fact that the term membership organization can, and indeed does, have any number of meanings in the law, each determined by the statute or agency involved. NRWC's President Reed Larson also recognized this fact when he testified at the deposition taken in *UAW* v. *NRTWLD&EF*, No. 839-73 (D.D.C.) that he was unsure whether NRWC would be considered a membership organization under the Internal Revenue Code. J.A. 63-67.

[12] As the court of appeals noted:

> NRWC is incorporated under Virginia law. Official recognition of members in the articles of incorporation would have required NRWC to hold an annual meeting of all members, a prohibitively expensive requirement (and one, in our view, that serves no purpose in the context of a corporation organized not for profit or other business purposes, but for promotion of a political philosophy).

Pet. App. 5a, n.4.

corporated. Since fundamental rights to participate in the political process are directly involved, a uniform definition is required. These rights cannot vary, depending upon the state of incorporation of the organization.

E. A Fiduciary Standard Must Be Rejected.

The FEC and the district court would apply a "fiduciary standard" for identifying members. Pet. Br. 26-27; Pet. App. 34a.[13] The express language of § 441b(b)(4)(A), however, allows corporations to solicit the families of administrative personnel, and allows labor organizations to solicit the families of members. Neither corporations nor labor organizations owe fiduciary obligations to those families. The right to solicit those individuals appears to have been based on a "rule of reasonableness" or "common sense".[14]

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[13] The FEC cites, as its authority on this point, remarks made by Representative Hansen. Pet. Br. 26-27. Those remarks were made in 1971—five years before the membership provision of § 441b was proposed.

[14] MR. ASHBROOK: The gentleman said a few minutes ago that he wanted to make his amendment perfectly clear. It is not being directed just to unions and members of unions but also their families? How far does this go? Do you go to cousins—first, second, and third? What would be the interpretation of "families"?

MR. HANSEN: I would interpret it as immediate family.

* * *

MR. HAYS: I think in applying this you would have to use the *rule of common sense.* I suppose if they went up to the door that anyone who lived in that house would be included.

* * *

MR. HANSEN: I can only give you my own opinion which is perhaps of no greater value than yours, or the opinion of the gentleman from Ohio. However, I would still limit it to immediate families, those who are in the home and are a part of what may be determined to be a family unit.

117 Cong. Rec. 43387-88 (1971) (Emphasis added).

Moreover, labor organizations do have a fiduciary obligation to agency-fee-payors, who are required by contract entered into in accordance with federal labor laws to contribute to a labor organization's general treasury. Labor organizations are under a duty to represent all employees in a bargaining unit and to account to agency-fee-payors for the manner in which their compulsory fees are spent. *See, e.g., Beck* v. *Communications Workers of America,* 468 F. Supp. 93, 96-97 (D. Md. 1979); *Ellis* v. *Brotherhood of Railway Clerks,* 78 Lab. Cas. ¶ 11,290 (S.D. Cal. 1976). In spite of this fiduciary obligation owed to agency-fee-payors, the FEC has taken the position in Advisory Opinion 1977-37, 1 Fed. Elec. Camp. Fin. Guide (CCH) ¶ 5,309, that agency-fee-payors cannot be solicited under § 441b(b)(4)(A)(ii).

Therefore, a fiduciary standard is of no assistance in determining who may be solicited under § 441b.

II.

THE FEC'S RESTRICTIVE DEFINITION OF MEMBERS IS CONTRARY TO THE STATUTE, THE REGULATION, AND THE INTENT OF CONGRESS

The FEC argues for a restrictive interpretation of the membership provision of the FECA, 2 U.S.C. § 441b(b)(4)(C).[15] A restrictive interpretation, however, is not supported by the statute, the regulation, or the legislative history of the § 441b exceptions enacted by Congress in 1976.[16]

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[15] 2 U.S.C. § 441b is reproduced in its entirety at Pet. App. 57a.

[16] The FEC's sweeping attack on the court of appeals opinion for "ignoring legislative intent," Pet. Br. 38, itself ignores the fact that a large part of the briefs of both parties on appeal dealt with that very question. The matter was not ignored—the court of appeals instead found no merit in the FEC's interpretation.

A. Statutory Language

The Amended Act does not define the term member for purposes of determining whom a nonstock corporation may solicit. Section 441b expressly allows the solicitation of persons having one of the following relationships with an organization:

1) Financial—the ownership of one share of stock;

2) Employment;

3) Membership (which is undefined);

4) A financial or employment relationship with a corporation that is a member of the soliciting organization; or

5) Except under § 441b(b)(4)(C), relationship by blood or marriage to anyone having one of the above relationships to the soliciting organization (the term "family" is not defined in the FECA).

The statutory language is broad enough to permit a trade association to solicit the grandchild of an executive of one of its member corporations. § 441b(b)(4)(D). It would also permit a labor organization to solicit a nonmember employee, and the family of a nonmember employee. § 441b (b)(4)(B). In short, the breadth of the statutory language indicates that Congress intended a preexisting associational relationship to be determinative of solicitation rights. This expansive statutory framework is inconsistent with the FEC's restrictive interpretation.

B. The Regulation

The definition of members found in the FEC regulation adopts as the test the standards for membership established by the organization, with the caveat that membership requirements must not consist solely of the requirement that one contribute to the separate segregated fund. 11 C.F.R. § 114.1(e); App. 62a.

NRWC's membership criteria, *infra* at 3-5, rise far above the requirements of the regulation. Yet the FEC remains unsatisfied.[17]

C. The Legislative History

The legislative history of § 441b reveals that Congress rejected efforts to restrict solicitation rights other than to bar solicitation of the general public. In contrast, Congress sanctioned the full enjoyment of First Amendment associational rights within an organization.

An analysis of the progression of § 441b through the House and Senate must begin with a discussion of SUN-PAC, *supra,* the advisory opinion issued by the FEC on November 24, 1975, which took the position that treasury funds of a corporation could be used to solicit employees. In this advisory opinion, the FEC noted that while the statutory language of the FECA did not limit the class of persons a corporation could solicit with treasury funds, the legislative history indicated that Congress did not want treasury funds used to solicit the general public. Since employees were distinguishable from the general public, the analysis concluded, corporate treasury funds could be used to solicit them. The FEC recognized, however, that the employment relationship presented an opportunity for exercising undue coercion, and thus it provided guidance on a method of solicitation which it thought would lessen the potential for such abuse.

To a large extent, the legislative history of § 411b is a struggle between those who wanted to repeal SUN-PAC, and thus to limit solicitation rights, and those who wanted to preserve SUN-PAC, and thus to allow the full enjoyment of solicitation rights within the organization. In the

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[17] NWRC and ERCC seek, as part of the prospective relief claimed, a declaration that NRWC's noncontributing supporting members may be solicited for contributions to ERCC.

end, not only did the latter group prevail, but as the following review of the legislative history demonstrates, Congress made the reasoning of SUN-PAC applicable to every type of organization covered by § 441b.

The effort to repeal SUN-PAC began when, on March 2, 1976, Senator Cannon introduced S. 3065, which included a provision (§ 321) that would have declared it unlawful

> * * * for a corporation or a separate segregated fund created by a corporation to solicit contributions from any person other than its stockholders, executive or administrative personnel, and their families or for a labor organization or a separate segregated fund created by a labor organization to solicit contributions from any person other than its members and their families.

S. Rep. No. 94-677, 94th Cong., 2d Sess. (1976). App. 3a.

As Senator Cannon remarked upon introducing S. 3065, this provision would have revoked SUN-PAC and would have imposed instead a strict limitation on the class of persons who could be solicited. 122 Cong. Rec. (1976), p. 6694, cols. 2 & 3. App. 5a-7a.[18] Corporations would have been limited to their stockholders, executive and administrative personnel, and the families of those persons. Labor organizations would have been limited to their members and their members' families.

Senator Cannon gave two reasons for imposing this strict limitation: (1) to prevent undue coercion of employees by management and (2) to balance the equities between corporations and labor organizations. *Id.*[19]

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[18] All references to the *Congressional Record* are to the permanent edition.

[19] Governmental attempts "to balance the equities" in First Amendment matters has been held to be unconstitutional. *Buckley*, 424 U.S. at 48.

Section 321 of the companion House Bill (H.R. 12406), H. Rep. No. 94-917, 94th Cong., 2d Sess. (1976), App. 8a-11a, would have imposed the same restrictions on corporations and labor organizations, except that incorporated trade associations and their PACs would have been permitted to solicit contributions from the stockholders and executive officers of their member corporations and the families of such stockholders and executive officers. 122 Cong. Rec. (1976), p. 6700, cols. 1 & 2. App. 12a.

The restriction on corporate solicitation rights came under immediate attack as an attempt to extend the political influence of labor organizations at the expense of corporations, and the constitutional implications of the proposed restriction were raised. 122 Cong. Rec. (1976), p. 6702, col. 3, and p. 6703, col. 1. App. 12a-13a. Senator Packwood introduced an amendment to S. 3065, which would have required reporting of the cost of corporate and union internal communications expressly advocating the election or defeat of a clearly identified candidate, even though he recognized that this Court had upheld the constitutional right to engage in unlimited internal communications. 122 Cong. Rec. (1976), p. 6730, col. 3, and p. 6731, col. 1. App. 14a-16a. Senator Cannon, the floor manager of S. 3065, was of the opinion that such a reporting requirement itself was unconstitutional for the same reasons that former 2 U.S.C. § 437a was declared unconstitutional in *Buckley* v. *Valeo*, 519 F.2d 821, 878 (D.C. Cir. 1975). 122 Cong. Rec. (1976), p. 6936, col. 3 and p. 6937, col. 1. App. 17a-18a. Senator Cranston viewed the Packwood amendment as "a dangerous Federal intrusion into the internal affairs not only of corporations and labor unions but of all membership organizations . . . ." 122 Cong. Rec. (1976), p. 6937, col. 3. App. 18a-19a.

On March 17, 1976, Senator Packwood introduced a second amendment to S. 3065, which would have "let everybody solicit everybody in the corporation" and would have fostered participation by encouraging people to give to

whatever fund they chose while treating corporations and labor organizations equitably. He stated that this would leave the law as it had been interpreted in SUN-PAC; however, the amendment did not include statutory language governing the manner of soliciting, which SUN-PAC had suggested as a means to avoid coercion. The amendment was rejected on a rollcall vote of 40 to 45. 122 Cong. Rec. (1976), p. 6958, cols. 1 & 2. App. 19a-20a.

Senator Packwood then introduced a third amendment which would have prohibited corporations and labor organizations from soliciting each other's solicitable class, but would have permitted both to solicit the non-unionized employee group. 122 Cong. Rec. (1976), p. 6958, col. 3, and p. 6959, col. 1. App. 20a-21a. The amendment would have been a balanced compromise between SUN-PAC's broad solicitation rights and S. 3065's strictly limited solicitation rights. The Senator remarked that unions were opposed to SUN-PAC because it gave corporations and unions equal access to all employees. 122 Cong. Rec. (1976), p. 6959, col. 1. App. 22a. He made it clear that Congress was not intending to allow the solicitation of persons "unrelated to the corporation." 122 Cong. Rec. (1976), p. 6959, col. 3. App. 23a.

The following day, Senator Scott objected to limiting the class of persons corporations and labor organizations could solicit. He felt this constituted an unconstitutional restriction on the "extent" of political communication rather than the "manner" of dissemination. 122 Cong. Rec. (1976), p. 7180, cols. 2 & 3. App. 25a-27a.

When Senator Chiles of Florida proposed an amendment that would have prohibited contributions from all but natural persons, 122 Cong. Rec. (1976), p. 7186, col. 1, App. 27a-28a, Senator Cannon, the floor manager of the bill, countered that such a restriction would "cast a severe chilling effect upon the first amendment rights of associations, committees, partnerships, political committees—whether formed by individuals or segregated fund committees of

corporations and labor organizations—and all other organizations or groups of persons. . . ." 122 Cong. Rec. (1976), p. 7187, col. 2. App. 29a-30a.

The membership exception was first proposed in the Senate by Senator Allen. The Senator felt that membership organizations should be able to use the same mechanism as corporations and labor organizations; that is, the separate segregated fund, to promote their interest in good government. He could discern no reason for preventing the creation of such funds. 122 Cong. Rec. (1976), p. 7197, cols. 1 & 2. App. 31a-32a.

The amendment was offered merely "to cure an omission in the bill." 122 Cong. Rec. (1976), p. 7198, col. 1. App. 32a-33a. Senator Cannon approved of the amendment stating, "I think it covers a void . . . and certainly is proper and should give those organizations the same opportunity that we have given to other organizations . . . ." *Id.*

When Congress reconvened on March 22, 1976, Senator Cannon again asserted that the opportunity for undue coercion justified strict regulation of the solicitation activities of corporations and labor organizations. 122 Cong. Rec. (1976), p. 7288, col. 3. App. 34a.

The following day, Senator Cannon introduced an amended version of his bill as a substitute for S. 3065. 122 Cong. Rec. (1976), p. 7622, col. 3. App. 35a. The substitute was designed to permit "everyone to solicit everyone in the corporation," but the cross-over solicitation, and the solicitation of non-union employees, and the families of such classes, could take place only twice a year under carefully prescribed conditions. 122 Cong. Rec. (1976), p. 7623, cols. 1 & 2. App. 35a-36a. The substitute contained the membership organization exception, *Id.*, but not the trade association exception. Senator Cannon did not comment upon the membership exception, but limited his remarks to the need to prevent coercion. 122 Cong. Rec. (1976), p. 7891, cols. 2 & 3. App. 37a. Senator Cannon then felt that his bill gave corporations and labor organizations "identical

benefits with respect to from whom they could solicit." 122 Cong. Rec. (1976), p. 7898, col. 1. App. 38a.

The original House Bill (H.R. 12406), *supra*, would have revoked SUN-PAC, but it would have added statutory language allowing incorporated trade associations and their PAC's to solicit the stockholders and executive officers of their member corporations, and the families of such persons. App. 8a-11a.

Representative Brademas supported H.R. 12406, arguing that SUN-PAC broadened the solicitation rights of corporations in derogation of Congressional intent. 122 Cong. Rec. (1976), p. 8571, col. 3. App. 47a. Representative Moore believed the solicitation restriction to be unconstitutional and discriminatory, unsupported by reason, and proposed by labor organizations out of fear of increased competition. 122 Cong. Rec. (1976), p. 8574, cols. 2 & 3. App. 47a-49a. He summarized the purpose of PACs as follows:

> The whole purpose in political action committees is to allow persons with like philosophical and/or economic interests to band together and to promote those interests through a political action committee. This is participation in our political system and certainly any participation in politics should be encouraged and not hindered. Our democracy needs greater, not less, participation by our citizenry. * * * .

122 Cong. Rec. (1976), p. 8574, col. 2. App. 49a.

On April 1, 1976, Representative Wiggins, in offering a motion to recommit, which would have simply reconstituted the FEC without making substantive changes in the FECA, remarked, *inter alia*, that there had been little debate in committee on the restriction on corporate and union solicitation rights, and that he felt any restriction on that right was a "direct affront to the right to participate in political activity." 122 Cong. Rec. (1976), p. 9100, col. 1, App. 50a.

The conference substitute bill merged the Senate and House versions of § 441b (§ 321 of P.L. 94-283) to allow

broad solicitation rights encompassing every group considered in the original bills and in the debates, except that cross-over solicitations were allowed only twice-yearly and then only under carefully prescribed conditions intended to prevent coercion. 122 Cong. Rec. (1976), p. 12198, col. 3, p. 12199, col. 3, and p. 12200, col. 1, App. 51a-53a, (remarks of Representative Hays), 122 Cong. Rec. (1976), p. 12181, cols. 2 & 3, App. 54a-55a, (remarks of Senator Cannon).

On May 4, 1976, Senator Cannon agreed with Senator Allen that the State Farm Bureau Federation, the Grange, the National Farmers Organization, and REA cooperatives could solicit their members, and that mutual life insurance companies could solicit their policyholders, within the meaning of the term members. 122 Cong. Rec. (1976), p. 12468, col. 3, and p. 12469, cols. 1 & 2. App. 56a-59a.

Thus, the legislative history shows that the House and Senate committees responsible for drafting the original bills attempted to revoke SUN-PAC and to impose strict limitations on the solicitation rights of corporations and labor organizations. It shows that Congress was concerned about the constitutional ramifications of the proposed restrictions, and that Congress, therefore, refused to revoke SUN-PAC substantively. Congress not only sustained the reasoning of SUN-PAC, but also extended solicitation rights to incorporated trade associations, membership organizations, cooperatives, and corporations without capital stock that have members, as well as to mutual life insurance companies that have policyholders. Congress intended that corporations and labor organizations be permitted to solicit all persons "related to" the organization, 122 Cong. Rec. (1976), p. 6959, col. 3. App. 22a-24a, or who "make up" the organization, 122 Cong. Rec. (1976), p. 12468, col. 3 App. 56a-59a, as distinguished from members of the general public.

The attempt to revoke SUN-PAC failed because Congress was acutely aware that it was being asked to inter-

fere with associational rights. Rather than enmesh itself in such a power brokering scheme, Congress simply established rules governing the conduct of solicitations by corporations and labor unions in the one area it felt presented an opportunity for undue coercion: the employment relationship. Although still cast in terms of a prohibition with exceptions, § 321 of the Amended Act (2 U.S.C. § 441b) is, in actuality, a broadening of legislatively-recognized associational rights. Thus, contrary to the FEC's assertions, the court of appeals decision that NRWC may solicit its active and supporting members is consistent with congressional intent.

III.

THE FEC'S INTERPRETATION OF THE TERM MEMBERS RENDERS § 441b(b)(4)(C) OF THE FECA UNCONSTITUTIONALLY VAGUE, FACIALLY AND AS APPLIED.

Assuming, *arguendo,* that the FEC's restrictive interpretation of the term members in the FECA is correct, the FECA, as interpreted by the FEC and the district court is unconstitutionally vague, facially and as applied, and has deterred the exercise of rights protected by the First Amendment.

A. Facial Vagueness

A statute is unconstitutionally vague under the due process clause of the Fifth Amendment where its language does not convey a sufficiently definite warning of proscribed conduct when measured by common understanding and practices, or stated otherwise, where its language is such that "men of common intelligence must necessarily guess at its meaning." *Cramp, supra,* at 237, quoting *Connally* v. *General Construction Co.,* 269 U.S. 385, 391 (1935).

Where conduct protected by the First Amendment is subject to vague statutory prohibitions, the statute must be declared invalid to prevent bad drafting from casting a

chill over the exercise of First Amendment rights. *Grayned* v. *City of Rockford*, 408 U.S. 104, 109 (1972). "Because First Amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity." *N.A.A.C.P.* v. *Button, supra*, at 433. The threat inherent in prohibitory language susceptible of various interpretations may chill the exercise of First Amendment rights just as much as the actual application of sanctions. *Speiser* v. *Randall*, 357 U.S. 513 (1958); *Smith* v. *California*, 361 U.S. 147 (1959).

The Fifth Amendment's proscription of vagueness applies to statutes that impose civil penalties, as well as to those that impose penal sanctions. *Arnett* v. *Kennedy*, 416 U.S. 134 (1974); *Jordan* v. *De George*, 341 U.S. 223, 231 (1951).

The Fifth Amendment's guarantee of due process protects corporations as well as individuals. *Connecticut General Life Insurance Co.* v. *Johnson*, 303 U.S. 77 (1938); *Grossjean* v. *American Press Co.*, 297 U.S. 233 (1936); *Louis K. Liggett Co.* v. *Lee*, 288 U.S. 517 (1933).

As discussed at page 28, *infra*, the FECA does not define the term member, and the regulation adopts as the test the standards established by the organization, with the caveat that membership requirements may not consist solely of the requirement that one contribute to the separate segregated fund.[20] The FEC has interpreted these provisions in a manner far more restrictive and vague than the statute and regulation, on their face, would allow. NRWC's criteria satisfy the requirements of the statute and regulation, but were unacceptable to the FEC and to the district court.[21]

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[20] NRWC and the FEC have stipulated that individuals do not become members of NRWC solely by contributing to ERCC. J.A. 61.

[21] An advisory opinion issued by the FEC to Public Service Political Action Committee reveals how the regulation's definition of members, as interpreted by the FEC, is deceptive. Advisory Opinion 1977-67 (June 28, 1978) provides, *inter alia*, that "[i]n

The term member is not univocally defined by the common law or ordinary English. There is no single conventional use of the term. One may be considered a member without wishing to become so (conscripted members of the armed forces) or may voluntarily become a member (civic club member). Some members have legally enforceable voting and property rights (condominium owners), while others do not (members of the Roman Catholic Church). Some persons are members because of a philosophical affinity of interest (ACLU or John Birch Society). Other members have no such interest (country club members). In 1979, the term member was held to be unconstitutionally vague when used undefined as a statutory criterion for determining whether a state's charitable solicitation laws would apply to a religious organization. *Heritage Village Church and Missionary Fellowship, Inc.* v. *North Carolina*, 253 S.E.2d 473, 487 (Ct. App. N.C. 1979), 263 S.E.2d 726 (S. Ct. N.C. 1980). *Larson, supra,* recognized that one can be a member of an organization without having any effective control over it.

The district court interpreted the solicitation exceptions of § 441b narrowly. Pet. App. 33a-37a. As discussed, *infra* at Section II, a narrow interpretation is inconsistent with congressional intent. The district court also failed to define members, Pet. App. 38a-39a, allowing the FEC's vague definition to stand. In essence, the district court left NRWC and ERCC without an answer on which to renew their political and associational activities.

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each instance where members do not have direct and enforceable participatory rights in the organization—such as those held by a shareholder or union member—facts must be examined before a determination may be made that a membership relationship exists." The criteria for determining which facts serve to indicate the existence of a "membership relationship" are not specified, apart from the statement that the person "knowingly" has taken some affirmative steps to become a member of the organization." A.O. 1977-67, 1 Fed. Elec. Camp. Fin. Guide ¶ 5326, at 10,302.

Although a violation of § 441b(b)(4)(A)(i) does not result in a criminal conviction, the civil penalties are quite severe. Section 437g(a)(7) provides that for knowing and willful violations the Court may impose a "civil penalty of not more than the greater of (a) $10,000; or (b) an amount equal to 200 percent of the contribution or expenditure involved in such a violation." The FEC sought the imposition of this severe civil penalty, and the district court ordered both the payment of a $10,000 fine and the refund of over $77,000. Given the magnitude of the penalties, the statute should be construed in light of the rules of construction applicable to penal statutes. *See, Mourning* v. *Family Publications Service, Inc.*, 411 U.S. 356, 376 (1973); *Krugh* v. *Miehle Co.*, 503 F.2d 121, 125 (6th Cir. 1974).

Where a penal statute is ambiguous in meaning, a court construing it should resolve the ambiguity in favor of the defendant. *Adamo Wrecking Company* v. *United States*, 434 U.S. 275, 286 (1978). *See also, United States* v. *Enmons*, 410 U.S. 396 (1973) and *United States* v. *Bass*, 404 U.S. 336 (1971). Therefore, any doubt which exists as to the range of meaning which Congress intended by the use of the undefined term members must be resolved in favor of NRWC and ERCC.

In *Lynch* v. *Overholser*, 369 U.S. 705, 711 (1962), this Court repeated the familiar rule that "a statute should be interpreted, if fairly possible, in such a way as to free it from not insubstantial constitutional doubts." (Citations omitted.) *See also, International Ass'n of Machinists* v. *Street*, 367 U.S. 740, 749 (1961): "Federal statutes are to be so construed so as to avoid serious doubt of their constitutionality."

Thus, two separate but related rules of construction dictate that § 441b(b)(4)(C) must be construed in a manner that resolves any ambiguity in favor of NRWC and ERCC.

NRWC has members based upon the voluntary adherence to an idea and the common advancement of that idea. Each

of the eleven members of NRWC selected by the FEC for depositions testified that he or she (1) knew the policy goals represented by NRWC and (2) contributed to NRWC for the purpose of advancing these policy goals. J.A. 68-92. Eight of these individuals (Witnesses A, B, C, D, E, F, I, and J) testified that they regarded themselves, or had regarded themselves, as members of NRWC.[22] If the term members, for purposes of the FECA, is defined consistently with the fundamental right of association, then NRWC's members meet the test and may be solicited under 2 U.S.C. § 441b(b)(4)(C).[23]

B. Vagueness As Applied

Justice Field, in describing the requirement of due process, stated: "The great purpose of the requirement is to exclude everything that is arbitrary and capricious in legislation affecting the rights of the citizen." *Dent* v. *West Virginia*, 129 U.S. 114, 124 (1889). Not only does a vague statute fail to provide constitutionally adequate notice of the nature of acts which will be penalized, it also invites arbitrary and capricious interpretation and applica-

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[22] *Id.* Witness G believed that NRWC represented his point of view but didn't know if he was a member. Witness H did not consider herself to be a member but caused her corporation to join NRWC as a member. Witness K did not necessarily consider herself to be a member of NRWC, although she did not object to being considered a member of NRWC.

[23] The district court, in discussing *Hunt* v. *Washington State Apple Advertising Commission*, 432 U.S. 333 (1977), and *Health Research Group* v. *Kennedy*, 82 F.R.D. 21 (D.D.C. 1979), implied that indicia of membership are the same for all purposes. Pet. App. 37a-49a. *Washington Apple*, however, involved a trade association seeking standing to litigate in district court. *Health Research Group* involved a public interest group, also seeking standing. NRWC and its members, on the other hand, seek to exercise First Amendment rights. Hence, *Washington Apple* and *Health Research Group* are inapplicable.

tion by governmental authorities. The United States Court of Appeals for the Seventh Circuit has expressed these considerations as follows:

> When a statute or regulation is challenged under the due process doctrine of vagueness, a court must look at the enactment from two angles: (1) whether it provides sufficient notice of what may not be done, and (2) whether it contains reasonably clear guidelines so as to prevent official arbitrariness or discrimination in its enforcement. (Citations omitted.)

International Society for Krishna Consciousness v. *Rochford,* 585 F.2d 263, 267 (7th Cir. 1978).

The United States Court of Appeals for the District of Columbia Circuit has noted: "Moreover, definitional uncertainty is an open invitation, if indeed not inevitably an antecedent, to virtually unrestrained administration." *Ricks* v. *District of Columbia,* 414 F.2d 1097, 1101 (D.C. Cir. 1968).

This Court has stated that the requirement of due process requires "legislatures to set reasonably clear guidelines for law enforcement officials and triers of fact in order to prevent 'arbitrary and discriminatory enforcement.' " *Smith* v. *Goguen,* 415 U.S. 566, 573 (1974).

The necessity for this requirement is apparent. Vague language in a statute denigrates the rights of citizens[24] by granting broad latitude to governmental officials to apply the statute on an *ad hoc* basis. *Papachristou* v. *City of Jacksonville,* 405 U.S. 156, 162-66 (1972).

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[24] The FEC's intrusion into the association privacy of the members of NRWC selected by the FEC for depositions illustrates this danger. Counsel for the FEC interrogated the deponents with respect to their association with other organizations besides NRWC and their contributions to such organizations. J.A. 223-29. Witness F, at his deposition, testified that he declined to renew his membership in NRWC "because of this mess." Ct. App. J.A. 489.

1. *Delayed Issuance of Advisory Opinion.*

The lack of clarity of § 441b(b)(4)(C) and the circular nature of the FEC's attempt to define members were a factor in the delay of the FEC in issuing an advisory opinion to ERCC in response to its request of January 6, 1976. This advisory opinion, A.O. 1976-79, which was issued on April 14, 1978, over two years after having been requested, provided only that the articles of incorporation of NRWC were "dispositive of the issue raised", 1 Fed. Elec. Camp. Fin. Guide (CCH) ¶ 5308, 10,274, giving no guidance whatsoever on what would satisfy the FEC.[23]

2. *Improper Conciliation Procedure.*

The record of the statutorily mandated conciliation efforts in these proceedings reveals basic defects in enforcement caused by the vagueness of § 441b(b)(4)(C) as interpreted by the FEC. The administrative complaint charges that NRWC and ERCC solicited nonmembers of NRWC, ironically, the very issue on which ERCC was still seeking advice from the FEC. While continuing to ignore ERCC's advisory opinion request, the FEC found reasonable cause to believe that NRWC and ERCC had violated § 441b(b)(4)(A)(i) by soliciting nonmembers. Ct. App. J.A. 311.

In 1976, § 437g(a)(5)(A) of the FECA, now amended and recodified as § 437g(a)(4)(A), required the FEC, if it found reasonable cause to believe that a violation had occurred, to "make every endeavor for a period of not less than 30 days to correct or prevent such violation by in-

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[23] FEC staff member, Ms. Sherry Swirsky, who had been assigned to analyze the complaint against NRWC and ERCC, has testified that "state law was never relevant to any of the cases she handled at the FEC." If state law was not relevant in 1976, obviously corporate documents drafted for state law purposes would not be "dispositive" for purposes of § 441b(b)(4)(C). Ct. App. J.A. 293.

formal means of conference, conciliation, and persuasion, and to enter into a conciliation agreement with the person involved . . . ."

The FEC translated this into a demand that NRWC agree to "amend its articles of incorporation and by-laws *and take all other steps which are necessary and proper to become a membership organization.*" Ct. App. J.A. 318, emphasis added. NRWC agreed to amend its articles, but the FEC, despite repeated requests by NRWC and ERCC, refused to describe the nature of such "other steps". Ct. App. J.A. 332-40. A memorandum prepared by Assistant General Counsel Spiegel on August 8, 1977, makes the fact of this refusal clear but the reason elusive. Mr. Spiegel wrote that at a meeting with counsel to NRWC and ERCC

> [i]n lieu of consent agreement-format[, r]espondents indicated they would agree to a violation and a fine of a lesser amount . . . if this were tied to a clause specifically setting forth [the] Commission's concept of membership and [the] fact that what they were utilizing as a concept of membership (assuming a change deleting the no-membership clause of their present Articles of Incorporation) was permissible. . . . I indicated that [the] membership issue (as thus articulated) did not really fall within [the] scope of [the] conciliation process of this case and that in any event [the] Commission would be unwilling to set affirmative guidelines for membership other than those in [the] regulation. . . ." Ct. App. J.A. 330-1.

The position of the FEC was, in essence, to force NRWC to change its organizational structure without guidance, and then to review the changes to determine if they were sufficient.[26] Since no criterion for the sufficiency of these

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[26] This was recognized by the FEC General Counsel in his July 14, 1977, Interim Conciliation Report, General Counsel Oldaker noted that if changes in NRWC's organizational documents were made, "the Commission would be called upon to approve the corporate respondent's new membership structure." Ct. App. J.A. 323, 329.

changes was to be found in the FECA or regulation, the result of this vagueness was a purely discretionary policy of "make changes until we tell you to stop." This arbitrary policy is explained by the admission of FEC Assistant General Counsel Noble at the January 19, 1978, meeting of the FEC Commissioners that the FEC knows what a membership organization "is not, but we do not know what one is."[27] This type of administrative "cat and mouse" game is forbidden by the Fifth Amendment.

3. *Potential for Inequitable Treatment.*

The vagueness of the FEC's interpretation of § 441b and the regulation provides the potential to harass organizations disfavored by FEC officials.[28]

Comparing the protracted delay in issuing AO 1976-79 to the extremely prompt processing of the administrative complaint on the same issue illustrates this potential for abuse.

The record reveals that Commissioner Harris, who was for many years associate general counsel of an organization opposed to NRWC and who, in the past, had clearly expressed his antipathy in regard to NRWC, Ct. App. J.A. 282, met privately with staff attorneys of the FEC Office of General Counsel. Ct. App. J.A. 279-82. As a result of this meeting, at which Commissioner Harris provided attorneys Litchfield and Simmons certain documents in regard to NRWC, draft AO 1976-79, dated September 27,

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[27] *See, infra*, p. 22, n.8.

[28] *See*, letter of June 4, 1979, from Commissioner Friedersdorf to Representative Rhodes. Ct. App. J.A. 386-87. Commissioner Friedersdorf wrote, *inter alia*: "It has been my observation since joining the Commission that some members of the Commission do have strong pro-labor backgrounds and are vigorous in their efforts to see that labor's interests are protected when cases involving labor political activities are presented to the Commission."

1976, was "pulled" from the agenda of an FEC meeting held on September 30, 1976. Ct. App. J.A. 284. This draft advisory opinion would have permitted NRWC to make a showing that it had a class of members based upon involvement in NRWC's activities. Ct. App. J.A. 278.

Less than a month later, certain of the same documents given by Commissioner Harris to attorneys Litchfield and Simmons appeared again—this time appended to the administrative complaint, a complaint raising precisely the same issue as was presented in ERCC's still pending advisory opinion request. In processing the complaint, the Office of General Counsel experienced no delay. The FEC legal assistant assigned to the complaint worked until 3:00 a.m. to complete the initial General Counsel's report in less than one day, a record equalled by only two other cases out of a total of 214 "matters under review" processed by the FEC in the period from May 11, 1976, through December 6, 1976. Ct. App. J.A. 279-82, 285-6.

Commissioner Harris' executive assistant, Ms. Susan King, had served previously as the Washington office director of the National Committee for an Effective Congress ("NCEC"), the complainant against NRWC. Ct. App. J.A. 294. In 1976, she met frequently with Harold Wolff, the officer of NCEC who signed the complaint filed by NCEC, and she may well have discussed the complaint with him. Ct. App. J.A. 283-4. Also, Ms. King had assisted Ms. Swirsky, the FEC legal assistant assigned to the NCEC complaint, in obtaining her position with the FEC. Ct. App. J.A. 282-3.

This sequence of events and acquaintances may have been purely random and coincidental, but at the very least, it illustrates that if such actors had desired to influence improperly the outcome of the advisory opinion or administrative investigation process, the vagueness of the statute and regulation, as interpreted by the FEC and the district court, provided ample opportunity.

IV.

THE WILLFULNESS OF ANY VIOLATION

The fact that this Court has granted a *writ of certiorari* in this litigation raises the possibility that the district court's finding of a knowing and willful violation, and the penalties imposed therefor, may be reinstated. Such a result would be unjust to NRWC and to its members.

In *AFL-CIO, supra,* the United States Court of Appeals for the District of Columbia Circuit decided that

> a 'willful' violation must necessarily connote 'defiance or such reckless disregard of the consequences as to be equivalent to knowing, conscious, and deliberate flaunting (sic) of the Act.' . . . [U]ncertainty as to the meaning of the law can be considered in assessing the element of willfulness in a violation of the law.

The court reasoned further:

> Had the AFL-CIO been intransigent after learning of the Commission's position on the transfers, we might have reached a different result. In fact, the AFL-CIO was willing during the conciliation period to accede to the Commission's position prospectively. It was the Commission's insistence on prohibiting the clearing of the balance between the funds that stymied the conciliation efforts.

628 F.2d at 102. Applying this analysis to the instant litigation, a finding of a knowing and willful violation cannot be made against NRWC and ERCC.

After this Court's decision in *Buckley,* federal election law was in a state of uncertainty and change. NRWC attempted to operate under the FECA until a complaint was filed. NRWC then ceased operating ERCC, and offered in writing to amend its articles. But the FEC refused to define what "other steps" were necessary to comply with the FECA. What should have been a simple conciliation process became stymied by the FEC.

The district court failed to use the appropriate test in defining the term members. The only proper definition of members for purposes of the constitutional right of association is that enunciated in *N.A.A.C.P.* v. *Button*, *N.A.A.C.P.* v. *Alabama*, *Kusper*, and *Buckley*, *supra*, which NRWC's active and supporting members satisfy. The court of appeals applied this test and reversed the district court. Therefore, it could not have been unreasonable for NRWC and ERCC to have believed that NRWC's members were members for purposes of the FECA, and under the reasoning of *AFL-CIO*, *supra*, the penalties imposed by the district court should be reversed, even should the court of appeals decision be modified or reversed.[29]

CONCLUSION

The FECA represents one step in the continuing attempt by Congress to regulate the federal election process in order to protect that process from the appearance or actuality of corruption and to protect individuals from being compelled to support federal candidates whom they oppose. These are compelling governmental interests which justify narrow, precise legislation touching upon the fundamental right of association which, together with free speech, forms the "foundation of a free society." *Buckley*, *supra*, at 25.

A careful analysis of the progress of the FECA Amendments of 1976, as they were introduced, amended, and eventually enacted, demonstrates that both the House of Representatives and the Senate intended that § 441b(b)(4)(C) respect associational rights.

The right of NRWC's members to associate freely is not abridged by the words of the statute, nor by the FEC regulation, 11 C.F.R. § 114.1(e). Instead, it is the FEC's interpretation of the statute and regulation which improperly

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[29] A more complete discussion of this point may be found at Reply Brief for Appellants, filed with the court of appeals, 29-37.

interferes with the fundamental right of NRWC and its members to participate in the electoral process.

The FEC's interference with the associational rights of NRWC and its members does not further the compelling governmental interests the FECA is designed to serve. It does not insulate the electoral process from any "political warchest" because the establishment of ERCC accomplishes that. It does not protect "dissenters," both because NRWC's members associate with NRWC on a purely voluntary basis and because ERCC's solicitations accomplish the goal of obtaining the consent of those solicited to use their resulting contributions for political purposes.

NRWC was formed to promote voluntary unionism. Its members have evidenced their support of this philosophy, in writing, by answering a questionnaire in a manner which assures their commitment to NRWC and its cause.

As an advocacy organization, NRWC provides the medium through which its members promote voluntary unionism in the marketplace of ideas. Through NRWC, the individual combines his voice with those of others, and he hopes to have an impact on society through educational, legislative, and political efforts.

The FEC has abridged these rights, claiming that NRWC's members are no more than the product of an effective "mail solicitation scheme." Pet. Br. 48. The exercise of the fundamental right of association to promote a cause is indistinguishable, in the FEC's eyes, from responding to a mail order advertisement.[30]

By failing to recognize this distinction, the FEC ignores the long-established rights of individuals acting through advocacy organizations. As noted by the court of appeals,

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[30] The FEC's position produces the anomalous result that the owner of one share of stock in a large, multinational corporation, e.g., ITT or IBM, enjoys broader associational rights than the most seasoned veteran of NRWC.

> [G]roup association is protected because it enhances "[e]ffective advocacy." The right to join together "for the advancement of beliefs and ideas" is diluted if it does not include the right to pool money through contributions, for funds are often essential if "advocacy" is to be truly or optimally effective. *Buckley* v. *Valeo*, 424 U.S. 1, 65-66 (1976) (citations omitted).

Pet. App. 7a.

Therefore, the decision of the court of appeals should be affirmed.

Respectfully submitted,

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Appendix

APPENDIX

Calendar No. 647

94TH CONGRESS
2D SESSION

S. 3065

[Report No. 94-677]

IN THE SENATE OF THE UNITED STATES

MARCH 2, 1976

Mr. CANNON, from the Committee on Rules and Administration, reported the following bill; which was read twice and ordered to be placed on the calendar

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A BILL

To amend the Federal Election Campaign Act of 1971 to provide for its administration by a Federal Election Commission appointed in accordance with the requirements of the Constitution, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Federal Election Campaign Act Amendments of 1976".

• • •

"CONTRIBUTIONS OR EXPENDITURES BY NATIONAL BANKS, CORPORATIONS, OR LABOR ORGANIZATIONS

"SEC. 321. (a) It is unlawful for any national bank, or any corporation organized by authority of any law of Congress, to make a contribution or expenditure in connection with any election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office, or for any corporation whatever, or any labor organization to make a contribution or expenditure in connection with any election at which Presidential and Vice Presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to, Congress are to be voted for, or in connection with any primary election or political convention, or caucus held to select candidates for any of the foregoing offices, or for any candidate, political committee, or other person to accept or receive any contribution prohibited by this section, or for any officer or any director of any corporation or any national bank or any officer of any labor organization to consent to any contribution or expenditure by the corporation, national bank, or labor organization, as the case may be, prohibited by this section.

"(b)(1) For the purposes of this section 'labor organization' means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exist for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work. As used in this section and in section 12(h) of the Public Utility Holding Company Act (15 U.S.C. 791(h)), the phrase 'contribution or expenditure' shall include any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value (except a loan of money by a national or State bank made in accordance with the applicable banking laws and regulations and in the ordi-

nary course of business) to any candidate, campaign committee, or political party or organization, in connection with any election to any of the offices referred to in this section; but shall not include communications by a corporation to its stockholders and executive or administrative personnel and their families or by a labor organization to its members and their families on any subject; nonpartisan registration and get-out-the-vote campaigns by a corporation aimed at its stockholders and executive or administrative personnel and their families, or by a labor organization aimed at its members and their families; or the establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes by a corporation or labor organization.

"(2) It shall be unlawful for such a fund to make a contribution or expenditure by utilizing money or anything of value secured by physical force, job discrimination, financial reprisals, or the threat of force, job discrimination, or financial reprisal; or by dues, fees, or other moneys required as a condition of membership in a labor organization or as a condition of employment, or by moneys obtained in any commercial transaction.

"(3) It shall be unlawful for a corporation or a separate segregated fund created by a corporation to solicit contributions from any person other than its stockholders, executive or administrative personnel, and their families or for a labor organization or a separate segregated fund created by a labor organization to solicit contributions from any person other than its members and their families.

"(4) Notwithstanding any other law, any method of soliciting voluntary contributions or of facilitating the making of voluntary contributions to a separate segregated fund established by a corporation, permitted to corporations, shall also be permitted to labor organizations.

"(5) Any corporation that utilizes a method of soliciting voluntary contributions or facilitating the making of volun-

tary contributions, shall make available, on written request, that method to a labor organization representing any members working for that corporation.

"(6) For purposes of this section, the term 'executive or administrative personnel' means individuals employed by a corporation who are paid on a salary, rather than hourly, basis and who have policymaking or supervisory responsibilities.

"(7) For purposes of this section, the term 'stockholder' includes any individual who has a legal or vested beneficial interest in stock, including, but not limited to, an employee of a corporation who participates in a stock bonus, stock option, or employee stock ownership plan.

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Reprinted in *Legislative History of Federal Election Campaign Act Amendments of 1976*, at 217, 251-54.

[6694]

Mr. CANNON.

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Finally, Mr. President, the bill proposes a number of changes in existing section 610 of title 18, United States Code, which prohibits contribution or expenditures by corporations and labor organizations. First of all, the provisions of section 610, like a number of other title 18 provisions related to the financing of campaigns, are transferred to the Federal Election Campaign Act of 1971 as amended, and made subject to the proposed new enforcement and penalty provisions of the bill.

A second change relates to the provisions which permit a corporation to communicate with its stockholders and their families on any subject. This has been expanded to permit corporations to communicate with executive or administrative personnel and their families on any subject as well.

A third change would similarly expand those to whom a corporation can aim nonpartisan registration and get-out-the-vote campaigns to include executive or administrative personnel of a corporation and their families, as well as stockholders and their families.

A fourth change would make it unlawful for a corporation or a segregated fund of a corporation to solicit contributions from any person other than its stockholders, executive, or administrative personnel, and their families, or for a labor organization or a segregated fund created by a labor organization to solicit contributions from any person other than its members and their families.

This fourth change alters existing law as interpreted by the Federal Election Commission in its Sun PAC Advisory Opinion 1975-23, wherein the Commission interpreted sec-

tion 610 to permit a corporation to solicit all its employees. It is felt that such an interpretation creates extraordinary pressure and undue potential for coercion, which was even acknowledged by the Commission in its advisory opinion, in a situation where management of a corporation is permitted to solicit political contributions from all its employees.

As evidenced by the dissent of Commissioners Harris and Tiernan, there is an extremely strong case to be made that the original intent of section 610 was to deny corporations the right to solicit contributions from anyone except stockholders and their families. Certainly, as the dissent in the Sun PAC opinion also pointed out, there are definite inequities involved when a corporation is permitted to solicit all employees:

> On a national scale, the majority ruling grants corporations as a group an unfair advantage over labor unions in the solicitation of political contributions. It is estimated that over 30,000,000 individuals own shares of stock in American corporations. 1975 *World Almanac* 94. But, out of the nation's total workforce of 84,000,000 workers, only 18,000,000 of them (or about 21%) are members of labor unions including AFL-CIO, independent, CNTU and CLC unions. 1975 *World Almanac* 108. Had corporations been restricted to soliciting only their shareholders, they could have solicited almost twice as many individuals as labor unions. Under the majority's ruling, however, corporations now have the potential of soliciting the entire workforce of the nation. Congress certainly did not intend to create such a gross disparity in the solicitation power of corporations and unions, by enacting the segregated fund exception to section 610, as the majority of the Commission now permits in its interpretation of the Statute. *Federal Register,* Vol. 40, No. 233—Wednesday, December 3, 1975, p. 56587.

Mr. President, I ask unanimous consent that the entire advisory opinion 1975-23 and dissent related to the Sun PAC matter I have referred to, be printed in its entirety after the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. CANNON. Mr. President, the changes proposed by S. 3065 will create a better balance in the equities between corporations and labor unions and reduce measurably the potential for coercion inherent in the employment relationship by limiting those whom corporations can solicit, other than stockholders and their families, to executive or administrative personnel, who are defined in the bill as "individuals employed by a corporation who are paid on a salary, rather than hourly, basis and who have policymaking or supervisory responsibilities."

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Union Calendar No. 458

94TH CONGRESS
2D SESSION

H. R. 12406

[Report No. 94-917]

IN THE HOUSE OF REPRESENTATIVES

March 11, 1976

Mr. HAYS of Ohio (for himself, Mr. THOMPSON, Mr. DENT, Mr. BRADEMAS, Mr. HAWKINS, Mr. ANNUNZIO, Mr. GAYDOS, Mr. JONES of Tennessee, Mr. MINISH, Mr. ROSE, and Mr. JOHN L. BURTON) introduced the following bill; which was referred to the Committee on House Administration

March 17, 1976

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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A BILL

To amend the Federal Election Campaign Act of 1971 to provide that members of the Federal Election Commission shall be appointed by the President, by and with the advice and consent of the Senate, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Federal Election Campaign Act Amendments of 1976".

* * *

"CONTRIBUTIONS OR EXPENDITURES BY NATIONAL BANKS, CORPORATIONS, OR LABOR ORGANIZATIONS

"SEC. 321. (a) It is unlawful for any national bank, or any corporation organized by authority of any law of Congress, to make a contribution or expenditure in connection with any election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office, or for any corporation whatever, or any labor organization to make a contribution to expenditure in connection with any election at which Presidential and Vice Presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to, the Congress are to be voted for, or in connection with any primary election or political convention, or caucus held to select candidates for any of the foregoing offices, or for any candidate, political committee, or other person knowingly to accept or receive any contribution prohibited by this section, or any officer or any director of any corporation or any national bank, or any officer of any labor organization, to consent to any contribution or expenditure by such corporation, national bank, or labor organization, as the case may be, which is prohibited by this section.

"(b)(1) For purposes of this section the term 'labor organization' means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or contributions of work.

"(2) For purposes of this section, the term 'contribution or expenditure' shall include any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value (except a loan of money by a national or State bank made in accordance with the applicable banking laws and regulations and in the ordinary course of business) to any candidate, campaign committee, or political party or organization, in connection with any election to any of the officers referred to in this section, but shall not include (A) communications by a corporation to its stockholders and executive officers and their families or by a labor organization to its members and their families on any subject; (B) nonpartisan registration and get-out-the-vote campaigns by a corporation aimed at its stockholders and executive officers and their families; or by a labor organization aimed at its members and their families; and (C) the establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes by a corporation or labor organization, except that (i) it shall be unlawful for such a fund to make a contribution or expenditure by utilizing money or anything of value secured by physical force, job discrimination, financial reprisals, or the threat of force, job discrimination, or financial reprisal, or by dues, fees, or other moneys required as a condition of membership in a labor organization or as a condition of employment, or by moneys obtained in any commercial transaction; (ii) it shall be unlawful for a corporation or a separate segregated fund established by a corporation to solicit contributions from any person other than its stockholders, executive officers, and their families, for an incorporated trade association or a separate segregated fund established by an incorporated trade association to solicit contributions from any person other than the stockholders and executive officers of the member corporations of such trade association and the families of such stockholders and executive officers (to the extent that any such

solicitation of such stockholders and executive officers, and their families, has been separately and specifically approved by the member corporation involved, and such member corporation has not approved any such solicitation by more than one such trade association in any calendar year) or for a labor organization or a separate segregated fund established by a labor organization to solicit contributions from any person other than its members and their families; (iii) notwithstanding any other law, any method of soliciting voluntary contributions or of facilitating the making of voluntary contributions to a separate segregated fund established by a corporation, permitted to corporations, shall also be permitted to labor organizations; and (iv) any corporation which utilizes a method of soliciting voluntary contributions or facilitating the making of voluntary contributions, shall make available, on written request, such method to a labor organization representing any members working for such corporation.

"(3) For purposes of this section the term 'executive officer' means an individual employed by a corporation who is paid on a salary rather than hourly basis and who has policymaking or supervisory responsibilities.

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Reprinted in *Legislative History of Federal Election Campaign Act Amendments of 1976*, at 735, 771-775.

[6700]

Mr. CANNON.

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S. 3065 and H.R. 12406 both propose a revision of existing Section 610 of Title 18 related to limitations on contributions and expenditures by corporations and labor organizations. The changes proposed by both bills are similar with the following key exceptions. First, S. 3065 contains language at page 36 of that bill, which would treat public utility holding companies the same as other corporations for purposes of the limitations on contributions and expenditures set forth in the section. Second, H.R. 12406 contains language at page 40 of that bill which provides that an incorporated trade association or a separate segregated fund established by an incorporated trade association would be permitted to solicit contributions from the stockholders and executive officers of the member corporations of such trade association and the families of such stockholders and executive officers. This could be done to the extent that any such solicitation of such stockholders and executive officers and their families had been separately and specifically approved by the member corporation involved, and such member corporation had not approved any such solicitation by more than one such trade association in any calendar year. Third, S. 3065 contains a definition of stockholder not in H.R. 12406.

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Mr. GRIFFIN. Mr. President, for all the reasons set forth in the Washington Post editorial of this morning entitled "Changing the Campaign Law," the substitute which I have offered should be adopted by the Senate. There are

other reasons in addition to those set forth in the Washington Post editorial. I ask unanimous consent that this editorial and another one that appeared in today's Washington Star be printed in the RECORD.

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[From the Washington Star, Mar. 16, 1976]
WHAT IS MR. HAYS UP TO?

It's hard to tell whether Rep. Wayne Hays is working for or against legislation to keep the Federal Election Commission in business.

You will recall that Mr. Hays had wanted to kill the commission but was turned around by George Meany of the AFL-CIO and House leaders who wanted the commission kept alive.

Mr. Hays's House Administration Committee has completed work on legislation ostensibly aimed at saving the Election Commission from legal infirmities found by the Supreme Court. But while fixing the flaws, the Administration Committee has added several appendages, at least one of which is highly controversial and might result in a presidential veto.

The Administration Committee has decreed that corporations that have organized political action committees to collect funds for candidates cannot solicit donations from employees; they could solicit only stockholders and management officials. No similar restriction was put on political action committees of labor organizations.

It is a blatant attempt by Mr. Hays & Co. to give labor an upper hand over management in raising political funds and electing candi- [6703] dates. A Republican member of the Administration Committee argued, to no avail, that limiting the right of solicitation to a certain class of individuals may be unconstitutional.

The White House has indicated that President Ford may veto the bill if it contains the restrictive provision when it reaches his desk. Mr. Hays, with his usual swagger, threatened to block requested appropriations for the U.S. Information Service unless Mr. Ford signs the bill—which smacks of political blackmail.

But wait. There may be more to all this than meets the eye. Perhaps the foxy Mr. Hays is trying to pull a fast one on his colleagues who want to keep the Election Commission in business. Could he be deliberately courting a presidential veto, hoping that the Election Commission will die of it?

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Mr. PACKWOOD. I send an amendment to the desk that does not have a number, but I want to call it up. I ask unanimous consent for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

On page 37, line 6, after "subject" insert the following: ", except that expenditures for any such communications which expressly advocate the election or defeat of a clearly identified candidate must be reported to the Commission in accordance with section 304(e)".

On page 37, line 10, after "families" insert the following: ", except that expenditures for any such nonpartisan registration and get-out-the-vote campaigns must be reported to the Commission under section 304(e)".

Mr. PACKWOOD. Mr. President, this amendment is designed to carry further the efforts at disclosure that have started in this Congress in the last few years. This is aimed both at business and at the unions. Under the present law, and under this bill, corporations are free to use corporate money to appeal to their shareholders or to their corporate officers and administrative personnel, and unions are free to use union money to communicate with their members—union dues; we are not talking about COPE dues here, or the voluntary contributions. We are talking about union money, dues. All this amendment does—and let us be frank about it—is require that corporations and unions, when they are using corporate money or union dues, file under section 304(e), which is the disclosure section of the present law, the expenditures when they use that money to—I read specifically the language—"expressly advocate the election or defeat of a clearly identified candidate" or—in the second part of the amendment—if they use the expenditures for [6731] "any such nonpartisan registration and get-out-the-vote campaigns."

Mr. President, the reason I am asking for this amendment is that we are all aware that corporate money and union money is used to solicit shareholders, to solicit administrative personnel in corporations, or union members in unions, to vote for or against particular candidates and, Mr. President, it is not reported; it is not identified. It is very easy for one candidate to say, "Oh, if I only had the money that my opponent had to spend," when that candidate making the charge may very well have been the recipient of hundreds of thousands of dollars worth of direct communications from corporations or from unions advocating defeat of the opponent of the person who made the statement.

I am not suggesting that this practice is good or bad. I am not suggesting the practice should be stopped or continued. All this amendment does is ask for disclosure.

Specifically, when a union mails out to its 200,000 or 300,000 or 400,000 members a 5- or 10-page brochure advocating the election or defeat of certain candidates, that should be disclosed. It does not even count against what used to be the candidate's limitation. That has even been stricken down. You can spend as much as you want. It just has to be disclosed. I think it is in keeping with the whole intent of this bill that we ask for public disclosure of those funds, whether they be corporate funds or whether they be union funds.

Again, I want to emphasize that I am not talking about the voluntary contributions that go to COPE from union members; I am not talking about the voluntary contributions that come from shareholders to a business political action fund. I am talking about the corporate money, I am talking about the union dues that are used to communicate with shareholders, administrative personnel, or, in the union case, with members.

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Mr. CANNON. Mr. President, in light of my colloquy with Senator PACKWOOD yesterday, I have reviewed the legislative history of the existing section 610 exemptions to the overall prohibitions against contributions and expenditures by corporations and labor unions.

The explanation in the CONGRESSIONAL RECORD by the sponsor of the statutory language in question, Representative Orville Hansen, and the Supreme Court's decision in *Pipefitters* v. *United States*, 407 U.S. 385 have convinced me that section 610 is intended to permit corporations and unions to advise their stockholders and members of the organization's support of or opposition to a candidate. I quote from a portion of Representative Hansen's remarks from the CONGRESSIONAL RECORD.

> Every organization should be allowed to take the steps necessary for its growth and survival. There is, of course, no need to belabor the point that Government policies profoundly affect both business and labor . . . If an organization, whether it be the NAM, the AMA or the AFL-CIO, believes that certain candidates pose a threat to its well-being or the well-being of its members or stockholders, it should be able to get its views to those members or stockholders. As fiduciaries for their members and stockholders, the officers of these institutions have a duty to share their informed insights on all issues affecting their institution with their constituents. Both union members and stockholders have the right to expect this expert guidance.

Since such communications are of a privileged nature, because of first amendment considerations, the present law completely excepts them from the disclosure and limitation requirements of the act. These exceptions apply to

every type of membership organization under section 431(f)(4)(c) of title 2 of the United States Code and section 591(f)(4) of title 18.

The Packwood amendment would alter this first amendment exception from the act. An analogous attempt to require disclosure in similar circumstances was made in a House amendment contained [6937] in the 1974 act—section 437 of title 2 of the United States Code. That provision was declared unconstitutional by the U.S. Court of Appeals for the District of Columbia Circuit in Buckley against Valeo. The decision on this point is so persuasive that no appeal was taken. I submit that the amendment proposed by Senator PACKWOOD would also infringe on constitutionally protected rights and should not be adopted.

The Buckley against Valeo case is the case that went on to the Supreme Court on other issues, and the Supreme Court held unconstitutional some of the other provisions, but this particular provision did not go beyond the circuit court of appeals.

So I wanted to make that explanation in light of my colloquy yesterday with Senator PACKWOOD when I told him what my view was of the requirements of the law.

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Mr. CRANSTON. Mr. President, the Packwood amendment applies to any membership organization, in effect. It represents, in my view, a dangerous Federal intrusion into the internal affairs not only of corporations and labor unions but of all membership organizations which may communicate political endorsements or opinions to their members—organizations like Common Cause, which don't endorse candidates; organizations like the Americans for Democratic Action and Americans for Constitutional Action, which on the other hand do endorse candidates, the Environmental Defense Fund, and the Sierra Club.

I see no reason why the costs of such internal communications are any business of the Federal Government, and I approach this from a conservative point of view about whether Government has a right to intrude to that degree into the affairs of private organizations.

The fact that an endorsement has been made is certainly no secret. There is nothing about disclosure involved here.

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Mr. CRANSTON. Certainly the public has no difficulty in finding out whom labor unions support, whom corporations support, or whom other organizations support. But to subject the internal communications of a membership organization with its members to disclosure requirements—to open their internal operations to audit by Federal authorities seeking to find discrepancies—clearly infringes on our basic rights of free speech and free expression. Volunteer citizens organizations formed for the purpose of lobbying the Government should be subjected to the absolute minimum of Government regulation.

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Mr. PACKWOOD. Mr. President, I shall explain what this amendment is, and it is controversial. I expect a rollcall vote on it.

This amendment would strike out the present provision of the bill indicating whom unions can solicit in a corporation and whom a business political action fund can solicit in a corporation and, in essence, lets everybody solicit everybody in the corporation. A union or a separate segregated union fund can solicit any union employees of the corporation or any nonunion employees of the corporation. It may happen to be nonsupervisory personnel. They can solicit administrative and executive personnel, officers, stockholders, and the families of any of those people.

Conversely, a fund created by the corporation can solicit shareholders, executive personnel, administrative personnel, nonunion personnel, and union personnel.

The amendment, pretty much, puts the situation back where the Federal Election Commission had left it with their rulings in the creation of what was known as the SUNPAC decision. It seems to me that, in fairness and in equity, if a union can solicit the union employees of a corporation, as is now presented in the bill, they ought to have equal access to solicit the nonunion and nonsupervisory employees. And there is no reason why they should not be allowed to mail to the shareholders of a corporation asking those shareholders to contribute to a union fund or a separate segregated fund provided by the union.

Again, it treats unions and businesses equitably. Any money raised by these funds would have to be disclosed, any money spent would have to be disclosed. I think it is a step toward encouraging political participation, because it will encourage people to give to whatever fund they choose and they can be equally solicited by either side.

I yield the floor, Mr. President.

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The result was announced—yeas 40, nays 45, as follows:

* * *

Mr. PACKWOOD. I do have other amendments to offer and I shall offer them. I am trying to reach some common ground, some median that this body will regard as fair to unions and to employers. This last amendment, which was defeated by a 45-to-40 vote, would have allowed union political action funds to solicit anybody in a corporation that that union had any organization in, and it would have allowed a corporate political fund to solicit any of the employees. It was a complete crossover.

As we heard the vote going on, several people asked me about it and they expressed the feeling that maybe the

corporation should not be allowed to solicit union employees, although I see no reason not to allow it. It seems to me that a union employee might have as much interest in his corporation that employs him as he does in the union he belongs to. But that is neither here nor there. The amendment lost.

The feeling was expressed that a corporation should not solicit from union employees. Others said that unions should not be soliciting from shareholders and executive personnel, administrative personnel, because basically their alinement was not with the union and everybody ought to be left to solicit really those with whom they have a common interest.

Mr. President, I send to the desk an amendment. I ask that it be read in full and I ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

On page 37, beginning with line 22, strike out through line 3 on page 38 and insert in lieu thereof the following:

"(3)(A) It is lawful for a corporation, or a separate segregated fund established by a corporation, to solicit contributions to such fund under paragraph (1) from stockholders and their families and from executive and administrative personnel and their families.

"(B) It is lawful for a labor organization, or a separate segregated fund established by a labor organization, to solicit contributions to such fund under paragraph (1) from members of that organization and their families.

"(C) It is lawful under this section for a corporation, a labor organization, or a separate segregated

fund established by a corporation or a labor organization to solicit contributions from employees of a corporation, and their families, who are neither executive and administrative personnel nor members of that labor organization.

"(D) It shall be unlawful under this section—

"(i) for a corporation, or a separate segregated fund established by a corporation, to solicit contributions from employees of that corporation who are represented by a labor organization in dealing with that corporation with respect to matters of pay, working conditions, and other employee benefits, and

[6959]

(ii) for a labor organization, or a separate segregated fund established by a labor organization, to solicit contributions from stockholders of a corporation and their families or from executive and administrative personnel of a corporation and their families.

Mr. PACKWOOD. Mr. President, this is what is called the middle ground amendment. I had the Library of Congress check for me with the major corporations in this country to find out how many total employees they had, how many were unionized, how many were nonunionized. Let me just go down the list.

* * *

If we add all of these up, what we come to is this situation with the major industrial corporations in this country: About half of what we would call their blue collar or nonsupervisory white-collar employees are unionized and about half are not.

Under what was called the SUNPAC decision of the Federal Election Commission, all of the employees of a corporation, whether they were unionized or not, could have

been solicited by a business or a union political action fund or a lawfully separate segregated fund.

After that decision came down, there was strong opposition to it, frankly, strong opposition from unions. They did not like the idea that unions and businesses would have an equal access to all employees. So an amendment was offered to this bill and it carried in committee, and a similar amendment carried in the House in the committee, which limits unions to soliciting only union employees, and it limits a corporate political action fund to soliciting only shareholders or very high echelon executive and administrative personnel. In each case either of those funds can solicit the families. But it leaves out this great middle group. These nonsupervisory, nonunionized employees, who are half of the work force of the major corporations in this country cannot be solicited by the union and cannot be solicited by the employer.

They surely have a stake in what goes on that might affect their company. They surely have a stake in what the unions who represent half of the employees of that company may advocate. Yet they cannot be solicited.

So, all I am doing with this middle ground amendment is allowing those employees who at the moment are nonunionized and nonsupervisory to be solicited by a union political action fund or a corporate political action fund.

Just let me read a selective list of the kinds of employees we are talking about:

* * *

We all know the kind of employee we are talking about. Is there any reason why they should be excluded from either a union political action solicitation or a corporate political action solicitation?

I want to make clear in this amendment we are not saying that a union or business political action fund can

solicit somebody unrelated to the corporation. Business cannot use its political action fund to go out and solicit shareholders of other corporations or employees of other corporations or employees of other corporations, nor can a union go outside the corporation where it is organized and solicit willy-nilly from other employees or from the public at large.

I think in fairness, in trying to reach a middle ground, this amendment does give an evenhanded chance to both groups to reach a group of employees that at the moment cannot be solicited by either group. I think that is unfair.

I have given up, although I was unhappy with the defeat of the amendment, employers soliciting union members and unions soliciting shareholders or higher echelon executive personnel.

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Mr. HUGH SCOTT. I seek recognition.

I think that some comments are in order at this time regarding the obvious unconstitutionality of section 111 of the bill we are now debating—the so-called Election Campaign Act Amendments of 1976.

In its present form, section 111 of Senate bill 3065 adds a new section 321 to title 2 of the United States Code, replacing the existing 18 U.S.C. 610, which generally prohibits contributions by national banks, corporations, or labor organizations, but permits them to pay the cost of establishing, administering, and soliciting contributions to a separate segregated fund to be used for political purposes. This new section would limit the classes of persons who may be either informed or solicited for contributions. Proposed section 321 would make it illegal for a corporation, or a political committee created by it, to solicit contributions to the committee from any person other than the corporation's stockholders, executive or administrative personnel, and their families. It would, at the same time, prohibit a labor organization and any of its political committees from soliciting contributions from any persons other than union members and their families. These restrictions would affect not just solicitations, but the dissemination of information.

The ultimate consequence of this section's provisions, however, goes further than merely preventing large numbers of persons from contributing to or receiving information from those political action committees—with whom they identify. It deprives vast numbers of individuals, some 75 million, from being given the opportunity of associating with either labor organizations or corporate management. Preserved under this proposed section are the

separate constituencies of labor and business—union members and corporate executives. Forgotten, ignored, and discriminated against are millions who are neither executive officers nor union members, but who have a vital interest in the political climate in which their employers or unionized fellow workers operate, and who might well wish to support one or the other's political action committee.

Section 321's blatant abridgement of the freedom of expression in the political area far exceeds what any court would countenance. Solicitation of contributions by corporations or labor organizations to their respective political action arms is a form of expression, regardless of whether it is oral or written. And while the regulation of conduct of the manner of expression can be constitutionally permissible, the Supreme Court, in United States against O'Brien, which was favorably cited in the Buckley case, set forth a constitutional test for regulation of courses of conduct having both speech and nonspeech elements.

The PRESIDING OFFICER. The time of the proponents of the amendment has expired. The Senator from Nevada has 23 minutes.

Mr. CANNON. I yield 2 minutes to the Senator.

Mr. HUGH SCOTT. I thank the Senator.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. HUGH SCOTT. Mr. President, to be constitutionally acceptable, the Government must have a substantial interest unrelated to suppression of first amendment freedoms, and the regulation itself must be no greater than is necessary to further the interest and can have only incidental impact on those freedoms.

Admittedly, the Federal Government has a substantial interest in its electoral process and in the preservation of the right and freedoms of individuals to participate fully

in our unique political process. But, where the speech of any individual does not infringe upon another's rights, then the Government can demonstrate no legitimate interest.

The new section 321 fails the O'Brien test, since it restricts not only the manner of solicitation, but also its extent. Inasmuch as unions or corporations are restricted to solicitations of narrowly defined classes of persons, the extent of the solicitations, or speech, is also restricted. Such restrictions are clearly prohibited by the Constitution. The Supreme Court made this distinction between "manner" and "extent" in Buckley against Valeo, and held that direct quantity, or extent, restrictions on political communication are not permissible under the Constitution.

Mr. President, I am convinced of the desire on the part of my colleagues in this Chamber to enact a fair, equitable, and workable election law. Section 321, however, is the antithesis of what is fair, equitable, and workable. It will accomplish nothing but the further polarization, this time by legislative dictate, of management and unions. It will relegate to political limbo a very substantial number of our fellow citizens, the very people who were originally intended to be the beneficiaries of these reform measures. But, far worse, it gives a congressional stamp of approval to the denigration of our most cherished, our most valuable, and our most sacred right—the right of free speech.

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[7186]

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Mr. CHILES. Mr. President, I would like to send another modification to the desk that just conforms with the amendment to the substitute.

The PRESIDING OFFICER. The amendment is so modified.

The amendment, as modified, is as follows:

At the end of the amendment, add the following:

On page 404, between lines 15 and 16, insert the following:

"LIMITATION ON CONTRIBUTIONS BY ARTIFICIAL LEGAL ENTITIES

"SEC. 330. (a) The Congress finds and declares that—

"(1) it is inappropriate for artificial legal entities, whether in corporate or other form, which are not permitted to vote for Federal candidates to make political contributions in campaigns for Federal office, and

"(2) that it would be appropriate as a means of guarding against the reality or appearance of improper influence stemming from the dependence of candidates on large campaign contributions from such entities to limit the privilege of contributing to Federal political campaigns to individuals generally.

"(b) Notwithstanding any other provision law, no person other than an individual may make a contribution to or for the use of any candidate for Federal office. This subsection does not apply to a political committee established and maintained by a political party.

"(c) Nothing in this section shall be construed to prevent or inhibit the right of individuals to associate with each other for the purpose of making political expenditures or for expressing their views on political matters.".

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[7187]

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Mr. CANNON. Mr. President, I yield myself 5 minutes.

Mr. President, the amendment offered by the distinguished Senator from Florida would permit only individuals in their personal capacities to participate in our electoral process. Although this amendment would allow certain political party committees to contribute to candidates and campaigns, the essential thrust of the proposal would be to cast a severe chilling effect upon the first amendment rights of associations, committees, partnerships, political committees—whether formed by individuals or segregated fund committees of corporations and labor organizations —and all other organizations or groups of persons. These groups and organizations would be summarily ostracized from participating in our democratic form of government. The proposal is thus fraught with grave constitutional infirmities.

When I say they would be ostracized in the sense of being able to make any contributions, it is true they could go out and make their own independent expenditures, go their merry way, and take the control of a campaign completely out of the hands of the participants in the campaign.

Mr. President, this amendment does not propose a reasonable restraint upon constitutionally protected associational freedoms, such as the overall contribution limitations in the Federal Election Campaign Act. These were upheld by the Supreme Court as appropriate legislative weapons against the reality or appearance of improper influence stemming from the dependence of candidates on large campaign contributions. The Court found these contribution ceilings to serve the basic governmental interest in safeguarding the integrity of the electoral process without impinging upon the rights of individual citizens and candidates to engage in political debate and discussion.

The amendment proposed by the distinguished Senator from Florida, however, does not serve any governmental interest. Instead of a limitation it is a direct prohibition of the constitutionally protected freedom of association. In Buckley against Valeo the Supreme Court reemphasized that "the right of association is a 'basic constitutional freedom' that is closely allied to freedom of speech and a right which like free speech lies at the foundation of a free society." [Slip opinion p. 19.]

In referring to the nature of protected associational freedom the Supreme Court stated, and I quote,

> Making a contribution, like joining a political party, serves to affiliate a person with a candidate. In addition it enables likeminded persons to pool their reserves in furtherance of common political goals." (Slip opinion p. 17).

The Court in Buckley said the act's contribution ceilings limit one important means of associating with a candidate or committee; that is, the making of a contribution. This extraordinary amendment, Mr. President, would prohibit this important means of associating with a candidate or committee to groups, associations, and other organizations which have in and of themselves protected first amendment rights.

Such a broad prohibition, furthermore, would preclude all associations from amplifying the voice of their adherents and members. Such amplification and expression of the voice of an association's adherents—here in the context of the association's participating in the electoral process by making contributions to candidates or committees—is the original basis for the recognition of first amendment protection of the freedom of association. [*Buckley* v. *Valeo*, slip opinion p. 17.]

Mr. President, at this moment it is difficult to conceive of a proposal which would have more severe constitutional

questions and I would strongly urge my colleagues to vote against it.

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[7197]

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Mr. ALLEN.

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We have many constructive amendments. I was telling of another amendment that I have, which I think is very constructive. As a matter of fact, I am sure the distinguished floor manager of the bill would not object to my saying that I had cleared this amendment with him and he agreed that the amendment had merit.

What it does is to allow a membership corporation or a corporation without capital stock but with membership, a cooperative, a membership organization, to set up a separate segregated fund. I do not have any group in mind, particularly, that I feel would want to contribute to any particular candidate, but I do feel they ought to have the same right as corporations.

Take for example, a local REA, which has possibly hundreds or thousands of members but which does not have any capital stock. They could not set up a separate fund and solicit contributions to that separate fund from their members.

The amendment I have would allow cooperatives, nonstock corporations, and membership organizations to set up the same type of segregated fund as a corporation with stock and stockholders or labor organizations.

Why should they be prevented from setting up funds? They are as interested in good government as the corporations with stock and stockholders and labor organizations. The distinguished manager of the bill, the chairman of the

Rules Committee, agreed that there was merit in that suggestion. If I had just been given a little more time I would have been able to get that amendment agreed to.

* * *

I believe he [the President] would see the merit of allowing nonstock corporations, cooperatives and membership organizations to set up segregated political funds and allow solicitations of the members of such organizations for contributions to that fund.

* * *

[7198]

The assistant legislative clerk read as follows:

> The Senator from Alabama (Mr. ALLEN) proposes an amendment No. 1496:
>
> On page 37, line 13, before the period insert the following: ", or by a membership organization, cooperative, or corporation without capital stock".
>
> On page 38, line 3, after the period insert the following: "This paragraph shall not prevent a membership organization, cooperative, or corporation without capital stock, or a separate segregated fund established by a membership organization, cooperative, or corporation without capital stock from soliciting contributions to such a fund from members of such organization, cooperative, or corporation without capital stock".

Mr. ALLEN. Mr. President, all this amendment does is to cure an omission in the bill. It would allow corporations that do not have stock but have a membership organization, such as a cooperative or other corporations without capital stock and, hence, without stockholders, to set up separate segregated political funds as to which it can solicit contributions from its membership; since it does not have any stockholders to solicit, it should be allowed to solicit its

members. That is all that the amendment provides. It does cover an omission in the bill that I believe all agree should be filled.

I have talked to the distinguished manager of the bill and I think I am correct in saying that he agrees to the adoption of the amendment.

I yield to the distinguished Senator from Nevada.

Mr. CANNON. Mr. President, the Senator has discussed that amendment with me. I think it covers a void that is not present in the bill and certainly is proper and should give those organizations the same opportunity that we have given to other organizations in the bill, and I am willing to accept the amendment.

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[7288]

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Mr. CANNON.

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Existing law has been interpreted to permit corporations to create comprehensive programs to solicit every employee of those corporations for contributions to corporate political action committees over which the employee has no control. This is in addition to the corporation's statutory right to solicit stockholders for their voluntary contributions to the same political action committees. Of course, under the statute, labor organizations are permitted to solicit their union members for contributions to labor union political action committees. As has been pointed out here on the floor during the debate on S. 3065, there is an enormous potential for coercion in a situation where a corporation is permitted to solicit all of its employees for such contributions, but in addition to this potential for coercion, it must be remembered and emphasized that stockholders who are being solicited, can vote out the corporate management who is doing the solicitation if they do not agree with it or if they do not agree with the contributions made from the political committees.

By the same token, the union members are in a position to vote out the union management with which it disagrees. However, employees of a corporation have no such recourse and should not be subject to political solicitation by their employers to such an all encompassing extent as has been interpreted under existing law by the Federal Election Commission.

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[7622]

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Mr. CANNON. Mr. President, on behalf of myself, Mr. HATFIELD, Mr. MANSFIELD, Mr. HUGH SCOTT, Mr. ROBERT C. BYRD, and Mr. GRIFFIN I send to the desk an amendment in the nature of a substitute for S. 3065, a bill to amend the Federal Election Campaign Act of 1971 and for other purposes, and I ask unanimous consent that the amendment be printed in the RECORD as well as having the normal printing.

* * *

[7623]

* * *

"(3)(A) Except as provided in subparagraphs (B) and (C), it shall be unlawful—

"(i) for a corporation, or a separate segregated fund established by a corporation, to solicit contributions to such a fund from any person other than its stockholders and their families and its executive or administrative personnel and their families, and

"(ii) for a labor organization, or a separate segregated fund established by a labor organization, to solicit contributions to such a fund from any person other than its members and their families.

"(B) It shall not be unlawful under this section for a corporation, a labor organization, or a separate segregated fund established by a corporation or a labor organization, to solicit in writing one contribution during the calendar year for use in connection with primary election campaigns, and one contribution during the calendar year for use in connection with general election campaigns, from any stockholder, officer, or employee of a corporation or the families of such persons. A solicitation under this subparagraph may be made only by mail addressed to the stock-

holder, officer, or employee at his residence, and shall be so designed that the corporation, labor organization, or separate segregated fund conducting such solicitation cannot determine who makes a contribution as a result of such solicitation and who does not.

"(C) This paragraph shall not prevent a membership organization, cooperative, or corporation without capital stock, or a separate segregated fund established by a membership organization, cooperative, or corporation without capital stock, from soliciting contributions to such a fund from members of such organization, cooperative, or corporation without capital stock.

"(4) Notwithstanding any other law, any method of soliciting voluntary contributions or of facilitating the making of voluntary contributions to a separate segregated fund established by a corporation, permitted to corporations, shall also be permitted to labor organizations.

"(5) Any corporation that utilizes a method of soliciting voluntary contributions or facilitating the making of voluntary contributions, shall make available, on written request, that method to a labor organization representing any members working for that corporation.

"(6) For purposes of this section, the term 'executive or administrative personnel' means individuals employed by a corporation who are paid on a salary, rather than hourly, basis and who have policymaking or supervisory responsibilities.

"(7) For purposes of this section, the term 'stockholder' includes any individual who has a legal or vested beneficial interest in stock, including, but not limited to, an employee of a corporation who participates in a stock bonus, stock option, or employee stock ownership plan.

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[7891]

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Mr. CANNON.

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This substitute also modifies the section of S. 3065 related to the solicitation of contributions by corporations and labor organizations to segregated political funds to allow, in addition to what is in S. 3065, corporations and labor unions and their segregated funds, to solicit in writing one contribution during the calendar year for use in connection with primary election campaigns and one contribution during the calendar year for use in connection with general election campaigns from any stockholder, officer, or employee of a corporation or the families of such persons provided, however, that such solicitation is made only by mail addressed to the stockholder, officer, or employee at his residence and shall be so designed that the corporation, labor organization, or separate segregated fund conducting such solicitation cannot determine who makes a contribution as a result of such solicitation and who does not. This restriction is a valuable protection against person-to-person coercion, and provides a degree of anonymity so corporations or unions cannot set up elaborate systems to monitor who contributes and who does not.

This same section was further modified to expand the provision prohibiting coercion by corporations and labor organizations by adding three specific prohibitions to protect employees during the solicitation process. In addition, the penalty provisions of S. 3065 were amended to provide up to a 2-year imprisonment or a fine of not more than $50,000, or both, for violation of the coercion prohibition portion of this section.

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[7898]

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Mr. ALLEN. Really this gives corporations certain benefits and labor organizations certain benefits that they do not have under the rest of the bill.

Mr. CANNON. The Senator is correct.

Mr. ALLEN. I see.

Mr. CANNON. And it gives them the identical benefits with respect to from whom they can solicit.

* * *

94th Congress, 2d Session House Report No. 94-917

FEDERAL ELECTION CAMPAIGN ACT AMENDMENTS OF 1976

REPORT

OF THE

COMMITTEE ON HOUSE ADMINISTRATION

TOGETHER WITH

MINORITY VIEWS, SEPARATE VIEWS, SUPPLEMENTAL VIEWS AND ADDITIONAL VIEWS

TO ACCOMPANY

H.R. 12406

TO AMEND THE FEDERAL ELECTION CAMPAIGN ACT OF 1971 TO PROVIDE THAT MEMBERS OF THE FEDERAL ELECTION COMMISSION SHALL BE APPOINTED BY THE PRESIDENT, BY AND WITH THE ADVICE AND CONSENT OF THE SENATE, AND FOR OTHER PURPOSES

MARCH 17, 1976.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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SUPPLEMENTAL VIEWS OF MR. FRENZEL

When the Supreme Court decision on Buckley, et al, was announced, the President promptly asked the Congress to reestablish the Federal Election Commission.

To encourage the Congress not to get slowed down in the consideration of other aspects of the election law, he also proposed that the FEC be given an expiration date of next winter. That feature would force another look at the whole law next year, but would assure that election laws now in effect would remain uniform throughout this year's election period.

The House Administration Committee ignored this good advice. Instead, it is now presenting a major, comprehensive revision and recodification of the election laws.

A sweeping revision of our election law is not a bad idea if it had been done in the regular manner. But no witnesses were called. The FEC was not called to testify. No party officials were allowed to testify. No candidates could appear. No public interest groups were invited. In short, not one minute of public hearings were held.

Incumbents re-wrote the law all by themselves. But none of the challengers, none of the parties, and none of the people, were even allowed to present testimony.

Without hearings, the Committee fashioned about the kind of an election bill a group of incumbents might be expected to make. It guts the independence of the FEC, and it feathers the nests of incumbents. It is a substantial retreat from the reforms of 1974. The foxes are back in charge of the chicken coop.

H.R. 12406 weakens the Election Commission to an intolerable level. Under it, either House of Congress can veto any decision of the Federal Election Commission. In fact, either House can terminate the FEC. Under the bill, the FEC is subservient to Congress. It is reduced to being

almost a subcommittee of the House Administration Committee.

The bill is self serving—another incumbent's delight. Penalties are reduced, and in some cases, like receiving excessive honoraria, eliminated. Congressional staff is made immune from investigation. Filings with Secretaries of States are eliminated.

The bill changes or eliminates all existing procedures. It repeals all advisory opinions. Since Congress has approved no regulations, there are none. Without advisory opinions, all candidates, parties, and political participants are without rules or guidelines.

Based on the Congressional record of rejecting regulations, the primaries will be over long before any regulations are in place. Some needed regulations probably won't be approved by general election time.

The bill also changes all the criminal procedures, by instituting a new civil procedure, and by changing, largely through reductions, the penalties for violation.

Briefly here's what the bill does:

I. Reconstitutes the Federal Election Commission, but

II. Removes its last shred of independence by:
   (a) effectively repealing all existing advisory opinions;
   (b) eliminating all opinions other than advisory opinions;
   (c) claiming a one-House veto on future opinions;
   (d) allowing a veto of any part of a regulation;
   (e) extending veto powers over forms as well as regulations;
   (f) providing a preferential, non-debatable rule on veto resolution;
   (g) allowing either House to kill the FEC by resolution.

III. Provides special shelters for incumbents by:
(a) immunizing all congressional employees from FEC investigation;
(b) reducing penalties for such violations as receiving excessive honoraria;
(c) effectively removes jail sentences for violators, but provides them for false swearing of complaints;
(d) allowing one candidate's committee to transfer funds to another;
(e) eliminating filing with secretaries of state;
(f) directing FEC to audit Presidential candidates first;
(g) remaining silent on disclosure of congressional office accounts (slush funds);
(h) increasing allowable cash contributions by 250 percent;
(i) adding restrictions and burdensome reporting for independent expenditures.

IV. Revises criminal code and penalty sections by:
(a) creating a civil process;
(b) giving FEC power to assess fines;
(c) making FEC prosecutor in civil cases;
(d) removing most jail penalties, if less than $5,000 violation;
(e) reducing authority of Justice Department;
(f) reducing FEC ability to ask that illegal practices be enjoined.

V. Gives Union Political Action Committees unfair advantages by:
(a) repealing SUNPAC (AO No. 23) decision which was approved by Justice Department and by Supreme Court;
(b) giving unions exclusive right to solicit union members for political contributions;
(c) denying corporate political action committees right to solicit their employees;

(d) preserving exemption from disclosure for political action committee expenditures.

VI. Makes other substantial changes too numerous to detail

H.R. 12406, the Committee bill, is bad law. It seeks to use a popular, needed, feature—the reconstitution of the Federal Election Commission—as a vehicle to carry many complicated, objectionable changes in all facets of our election law.

H.R. 12406 is not necessary. There are nearly 100 House sponsors of simple reconstitution bills. That was the President's recommendation and Common Cause's recommendation. A simple bill to reestablish the Federal Election Commission is still the best solution. H.R. 12406 is an unacceptable 58 page monster.

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SUPPLEMENTAL VIEWS OF W. HENSON MOORE

I am strongly opposed to this bill for reasons expressed in the Minority Report and one additional one. Section 321(b) provides among other things that a corporate political action committee cannot solicit to be members of that committee any person other than its stockholders, executive officers or their families. Executive officers are defined as salaried employees with policy making or supervisory authority. This changes the existing law which allows a corporate political action committee to solicit not only those persons, but any employee of the corporation. The existing law has been approved by the Federal Elections Commission, the Justice Department and the United States Supreme Court in the recent decision of *McCarthy and Buckley* v. *Valeo.*

I believe this new language to be unconstitutional, unwise and unfair. It makes an illogical distinction between types of employees of a corporation and treats them discriminatorily. Under the new language, a corporate political action committee could not solicit the large majority of its employees for no apparent rational reason. Whether an employee is paid by the hour, piece or salary, and whether an employee supervises others or is supervised, he or she is no less an employee and has the same economic interests as all others working for the employer.

What then is the reason the current law is so radically altered in this bill? Since no hearings were held to develop evidence for the need for such, one can only conclude the obvious—"politics". The strongest and most effective coalition of political action committees in the nation, those of labor unions, oppose any challenge to their current collective political dominance as the most powerful special interest group in American politics today. Certainly members of unions should be encouraged to participate in union political action committees, but this is not a valid reason to deny this right to other American workers.

Although of no legal significance, there is no evidence that labor unions are justified in fearing a loss of the political power of the "working man". The activities of a political action committee are determined by its membership. Employee ("working man") members of such a committee should have the same interests and rights in any political action committee they choose to join, whether labor or place of employment related. Thus, it cannot be the concern for the political activities of the working man in general that causes labor union opposition, but the fear of increased competition or diminution of power of their own political action committees.

As a matter of fact, many members of unions might well choose to also join the political action committee of the corporation for which they work as well as that of their union. It should be pointed out that approximately 75 percent of America's total labor force does not belong to unions, and if they work for corporations and are not shareholders or executive officers, they cannot be solicited. This practically all bu. eliminates their right to participate in this type of political activity. This bill also prevents non-union employees of a corporation or employees of a corporation which has no union at all from being solicited if they are not shareholders or executive officers. Therefore, in an unconstitutional, unwise and unfair manner, only labor union political action committees can under this bill solicit employees who are not shareholders or executive officers. This is a severe political limitation.

The whole purpose of political action committees is to allow persons with like philosophical and/or economic interests to band together and to promote those interests through a political action committee. This is participation in our political system and certainly any participation in politics should be encouraged and not hindered. Our democracy needs greater, not less, participation by our citizenry. Political action committees can be justified only on

this basis. They currently meet this need by encouraging citizens by the thousands to become more politically active. There should be no "political" hindrances on who can join and participate in such committees.

For these reasons and the ones expressed in other minority views, this bill should be defeated and the Federal Election Commission simply reconstituted.

W. HENSON MOORE.

Reprinted in *Legislative History of the Federal Election Campaign Act Amendments of 1976*, at 797, 891-93, 895-96.

CONGRESSIONAL RECORD—HOUSE—March 30, 1976

[8571]

Mr. BRADEMAS.

* * *

Mr. Chairman, * * * it is clear that the "Sun Oil" opinion represents a kind of regulatory agency coup, the substitution of the judgment of a regulatory agency for the intent of Congress expressed in legislation.

Mr. Chairman, now is the time and place to set right what can only be described as an outrageous abuse of power by a regulatory agency.

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[8574]

* * *

Mr. MOORE. Mr. Chairman, I rise in opposition to H.R. 12406 as I am strongly opposed to this bill for reasons expressed in the minority report and one additional one. Section 321(b) provides among other things that a corporate political action committee cannot solicit to be members of that committee any person other than its stockholders, executive officers, or their families. Executive officers are defined as salaried employees with policymaking or supervisory authority. This changes the existing law which allows a corporate political action committee to solicit not only those persons, but any employee of the corporation. The existing law has been approved by the Federal Elections Commission, the Justice Department, and the U.S. Supreme Court in the recent decision of McCarthy and Buckley against Valeo.

I believe this new language to be unconstitutional, unwise, and unfair. It makes an illogical distinction between types of employees of a corporation and treats them discriminatorily. Under the new language, a corporate political action committee could not solicit the large majority of

its employees for no apparent rational reason. Whether an employee is paid by the hour, piece, or salary, and whether an employee supervises others or is supervised, he or she is no less an employee and has the same economic interests as all others working for the employer.

What then is the reason the current law is so radically altered in this bill? Since no hearings were held to develop evidence for the need for such, one can only conclude the obvious—"politics." The strongest and most effective coalition of political action committees in the Nation, those of labor unions, oppose any challenge to their current collective political dominance as the most powerful special interest group in American politics today. Certainly members of unions should be encouraged to participate in union political action committees, but this is not a valid reason to deny this right to other American workers.

Although of no legal significance, there is no evidence that labor unions are justified in fearing a loss of the political power of the "working man." The activities of a political action committee are determined by its membership. Employee—"working man"—members of such a committee should have the same interests and rights in any political action committee they choose to join, whether labor or place of employment related. Thus, it cannot be the concern for the political activities of the working man in general that causes labor union opposition, but the fear of increased competition or diminution of power of their own political action committees.

As a matter of fact, many members of unions might well choose to also join the political action committee of the corporation for which they work as well as that of their union. It should be pointed out that approximately 75 percent of America's total labor force does not belong to unions, and if they work for corporations and are not shareholders or executive officers, they cannot be solicited. This practically all but eliminates their right to participate

in this type of political activity. This bill also prevents non-union employees of a corporation or employees of a corporation which has no union at all from being solicited if they are not shareholders or executive officers. Therefore, in an unconstitutional, unwise and unfair manner, only labor union political action committees can under this bill solicit employees who are not shareholders or executive officers. This is a severe political limitation.

The whole purpose in political action committees is to allow persons with like philosophical and/or economic interests to band together and to promote those interests through a political action committee. This is participation in our political system and certainly any participation in politics should be encouraged and not hindered. Our democracy needs greater, not less, participation by our citizenry. Political action committees can be justified only on this basis. They currently meet this need by encouraging citizens by the thousands to become more politically active. There should be no "political" hindrances on who can join and participate in such committees.

For these reasons and the ones expressed in other minority views, this bill should be defeated and the Federal Election Commission simply reconstituted.

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[9100]

Mr. WIGGINS.

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Moreover, there was little debate during our consideration of this bill in committee about the PAC language. The bill takes the position that union members belong to the union for purposes of solicitation of funds and that executives and stockholders belong to a corporation for purposes of soliciting funds. A limitation on the right to solicit is a direct affront to the right to participate in political activity. It is contrary, in my opinion, to the first amendment, and it will produce a legal challenge to the bill which the Members have supported this afternoon in committee.

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[12198]

Mr. HAYS.

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The extent to which corporations and unions may engage in political activity created perhaps the greatest amount of controversy. In this area, as in the others I have already described, the conference substitute follows the basic outline of the House amendments. However, certain provisions of the Senate bill which were designed to meet the objection that corporations had been unduly restricted were modified and included in the conference substitute.

First the general rules applicable to all other corporations are extended to the companies regulated by the Public Utility Holding Company Act.

Second, the individuals with whom a corporation may communicate on political subjects, reached through registration and get-out-the-vote drives, and solicited for contributions to a political fund was broadened to include professional employees who are not represented by a bargaining agent and supervisory employees other than foremen who directly supervise rank-and-file employees.

Third, the conference substitute includes a requirement that any person soliciting an employee for a contribution to a political fund must advise that employee that the money will be used for a political purpose and that he is free not to make a contribution.

Fourth, the conference substitute includes the Senate provision permitting membership organizations, cooperatives, and corporations without capital stock to solicit their members for contributions to a political fund.

Finally, the conferees agreed to a provision permitting corporations to solicit their stockholders and all their em-

ployees by mail twice a year, in a manner which assures the anonymity of those who do not choose to contribute or contributes $50 or less. A labor organization representing any employee of that corporation or its subsidiaries, branches, divisions, and affiliates is granted a correlative right subject to the understanding that the corporation has the choice of either providing the union with the necessary mailing list or retaining a third person to make the mailing.

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The final major feature of the conference substitute is the elaborate compromise which protects rank and file employees from the coercive pressure inherent in direct solicitation by their employer to a corporate political fund. The accommodation reached grants corporations the right to use treasury money for such solicitations but conditions that right by imposing appropriate safeguards to assure that reprisals cannot be taken against an employee who does not contribute or who refuses to contribute as much as management wishes him to give.

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As all those who have followed this legislation know, two of the most controversial issues have been the extent to which corporations and membership organizations, including unions, should be [12200] required to report internal political communications, and the extent to which corporations should be allowed to solicit contributions from employees. With regard to the provision added to paragraph 301(f)(4) to settle the first of these disputed issues I wish to make it clear that when a single occasion is devoted to communications on a variety of subjects, even those relating to politics, the costs are reportable only if the major portion of the time—or in the case of a publication, the space—is devoted to advocating the election or defeat of a candidate. It should also be noted that while the $2,000 threshold figure is per election and not per candidate, it is also on a per organization basis. If several

organizations finance a single covered communication, they are each chargeable only with the amount they have spent. Each corporation and union is only responsible for the amount of money it actually spends. As to the provisions of the new paragraph 321 dealing with corporate solicitations of employees, it should be noted that as indicated in the conference report, a corporation can directly solicit employees who also own stock—stockholder employees—only as part of an overall solicitation of stockholders and by and only utilizing staff methods as employed in soliciting nonemployee stockholders. This rule provides the necessary minimum measure of protection to employees who happen also to own a few shares of their corporate stock but who would, of course, be subject to employer coercion if they could be singled out and treated differently from the nonemployee stockholders. I would also emphasize that the House conferees refused to accept the broad and artificial definition of stockholder contained in the Senate bill. Like the rule I have just noted, this action was predicated on our determination to provide maximum protection for employees. And, for the same reason, the House conferees were not amenable to including a narrow definition of the term solicitation. Just as we left the definition of the term stockholder to the general corporate law, we determined that any action [which] could fairly be considered a request for a contribution should be treated as a solicitation.

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[12181]

Mr. CANNON.

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The conference substitute also contains a fair compromise between the Senate bill and the House amendment pertaining to the solicitation by corporations and labor organizations of voluntary contributions to separate segregated funds. It follows the structure of the Senate bill, permitting corporations to solicit voluntary contributions from stockholders and executive or administrative personnel, and labor organizations to solicit their members. The conference bill would clarify the definition of executive or administrative personnel to include individuals employed by a corporation who are paid on a salary, rather than hourly, basis and who have policymaking, managerial, professional, or supervisory responsibilities. In addition to the above, corporations and labor organizations would be able to solicit all employees and stockholders twice a year in writing by mail to their residences with the proviso that the solicitation be designed so that the party making the solicitation cannot determine who makes a contribution of $50 or less as a result of such solicitation and who does not make such a contribution.

The conference bill adopted the House provisions giving trade associations rights to solicit stockholders and executive or administrative personnel of member corporations.

The conference report, at page 63, states as follows:

> The conference substitute follows the House amendment with regard to the solicitation by a trade association of stockholders and executive or administrative personnel (and their families) of a member corporation of such trade association. The conference substitute contains the provision of the Senate bill permitting a membership organization, cooperative, or cor-

poration without capital stock, or a separate segregated fund established by such organizations, to solicit contributions to such a fund from members of such organization, cooperative, or corporation without capital stock. In light of the fact subsection (b)(4)(D) governs solicitations by a trade association of the stockholders and executive or administrative personnel of a member organization, then the term "membership organization" in subsection (b)(4)(C) is not intended to include a trade association which is made up of corporations.

A question has come up as to the purpose of the phrase "the term 'membership organization' in subsection (b)(4)(C) is not intended to include a trade association which is made up of corporations."

First of all, this language was included to preclude a trade association, which is also a membership organization, and which desires to solicit the stockholders and employees of a member corporation, from avoiding the limitations of 321(b)(4)(D), which limit such solicitation to stockholders and executive or administrative personnel of the member corporation, and further provides that the member corporation must consent to such solicitation and only give its consent to one trade association in a calendar year.

Second, it applies only to trade associations with corporate members and is intended to regulate the solicitation of the stockholders and executive or administrative personnel of such corporate members. A trade association which is a membership organization may, of course, solicit its other members, such as individuals, partnerships, et cetera, under 321(b)(4)(C).

In most other respects the provisions of the Senate bill related to corporate and labor union political action committees were retained, except the definition of stockholder, which was omitted, leaving the interpretation of this term to general corporate law.

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[12468]

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Mr. ALLEN.

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Now, an amendment which I offered on the floor and which was accepted by the manager of the bill, the distinguished Senator from Nevada (Mr. CANNON), amendment No. 1496, was adopted by the Senate and agreed to in the conference.

This amendment was made necessary by the fact that there are certain types of corporations or organizations that do not have stockholders. This amendment appears on page 19 of the conference report and is in section 321(b)(2)(C), starting with the third line from the bottom of the page:

> This paragraph shall not prevent a membership organization, cooperative, or corporation without capital stock, or a separate segregated fund established by a membership organization, cooperative, or corporation without capital stock, from soliciting contributions to such a fund from members of such organization, cooperative, or corporation without capital stock.

So if the members of such an organization, who, not being stockholders, still make up the corporation, would solicita- [12469] tions by such an organization of its members fall into the first category that I enumerated as to who may be solicited by a corporation or a labor organization or a separate segregated fund set up by one of these? Would they come in the class that could be solicited at any time?

Mr. CANNON. Yes, the Senator is correct, that the provisions of section 321(b)(2)(C), and later, on page 19, section 321(b)(4)(C) would permit, for example, a mutual life insurance company or a separate segregated fund established by such an organization to solicit contributions

for such a fund from its members. So any type of an organization that had members, though not categorized as stockholders, and so on, would be covered under that provision.

Mr. ALLEN. And could solicit at any time?

Mr. CANNON. They could solicit at any time, just as a corporation and its separate segregated fund can solicit certain classes at any time, and a labor union can solicit its members at any time.

Mr. ALLEN. So a membership corporation such as a State Farm Bureau Federation, the Grange, or the National Farmers Organization could solicit their members?

Mr. CANNON. Yes. If they are corporations they could solicit their membership.

Mr. ALLEN. And REA cooperatives could solicit their members at any time.

Mr. CANNON. Yes. That is my understanding of the intent of the Senator's amendment and of the language we have drafted in the report.

Mr. ALLEN. I appreciate the answers from the chairman. I am glad he mentioned specifically a mutual life insurance company, such as, I would understand, Metropolitan, Mutual of New York or Equitable. Any mutual life insurance company would be able to solicit its policyholders since they are the group that make up the corporation.

Mr. CANNON. If the policyholders are members within the definition of that type of an organization, then they could be solicited under that provision of the law.

Mr. ALLEN. Mr. President, I ask unanimous consent that a letter dated April 5, 1976, from Mr. Remmel H. Dudley, vice president, Metropolitan Life Insurance Co., here in Washington, be printed in the RECORD. I have shown the manager of the bill a copy of the letter.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

METROPOLITAN LIFE,
Washington, D.C., April 5, 1976.

Re Federal Election Campaign Act Amendments of 1976—S. 3065.

Senator JAMES B. ALLEN,
Dirksen Senate Office Building,
Washington, D.C.

DEAR SENATOR ALLEN: In debating the above bill, the Senate on March 18, 1976 adopted your Amendment No. 1496, to bring "membership organizations, cooperatives, or corporations without capital stock" within the Act.

As you know, a mutual life insurance company has no stockholders. As we read the language of your amendment we are of the opinion that a mutual life insurance company would, therefore, be included. This interpretation was confirmed last week by your Legislative Assistant, Mr. Gentry. Indeed, Mr. Gentry told me other insurance companies had made a similar inquiry and had been assured it was your intent to include such companies.

To avoid any misunderstanding, and to make this perfectly clear, we wonder if it would be possible for the Conference Committee to include in its report a specific reference to mutual life insurance companies. While the language as it exists in your amendment is reasonably clear, such specific reference would preclude any question, and would be consistent with your intent. If this is not feasible, perhaps during debate on the conference bill you could make this point clear in a coloquy.

We appreciate your interest in including these organizations in your Amendment No. 1496.

With most cordial regards, I am

Sincerely yours,

REMMEL H. DUDLEY,
Vice President.

Mr. ALLEN. This letter is an inquiry from a vice president of the Metropolitan Life Insurance Co., saying that their attorneys construe this amendment to cover a mutual life insurance company. The answer that the chairman has made is that such an operation would be covered by this amendment and would permit a mutual life insurance company to solicit policyholders. That is correct, is it not?

Mr. CANNON. Yes, that is correct.

* * *

Former 18 U.S.C. § 610

§ 610. Contributions or expenditures by national banks, corporations or labor organizations.

It is unlawful for any national bank, or any corporation organized by authority of any law of Congress, to make a contribution or expenditure in connection with any election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office, or for any corporation whatever, or any labor organization to make a contribution or expenditure in connection with any election at which presidential and vice presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices, or for any candidate, political committee, or other person to accept or receive any contribution prohibited by this section.

Every corporation or labor organization which makes any contribution or expenditure in violation of this section shall be fined not more than $25,000; and every officer or director of any corporation, or officer of any labor organization, who consents to any contribution or expenditure by the corporation or labor organization, as the case may be, and any person who accepts or receives any contribution, in violation of this section, shall be fined not more than $1,000 or imprisoned not more than 1 year, or both; and if the violation was willful, shall be fined not more than $50,000 or imprisoned not more than 2 years or both.

For the purposes of this section "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exist for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

As used in this section, the phrase "contribution or expenditure" shall include any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value (except a loan of money by a national or State bank made in accordance with the applicable banking laws and regulations and in the ordinary course of business) to any candidate, campaign committee, or political party or organization, in connection with any election to any of the offices referred to in this section; but shall not include communications by a corporation to its stockholders and their families or by a labor organization to its members and their families on any subject; nonpartisan registration and get-out-the-vote campaigns by a corporation aimed at its stockholders and their families, or by a labor organization aimed at its members and their families; the establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes by a corporation or labor organization: *Provided,* That it shall be unlawful for such a fund to make a contribution or expenditure by utilizing money or anything of value secured by physical force, job discrimination, financial reprisals, or the threat of force, job discrimination, or financial reprisal; or by dues, fees, or other monies required as a condition of membership in a labor organization or as a condition of employment, or by monies obtained in any commercial transaction.

Federal Election Commission Regulations, 11 C.F.R. § 114.1

* * *

(e) "Members" means all persons who are currently satisfying the requirements for membership in a membership organization, trade association, cooperative, or corporation without capital stock and in the case of a labor organization, persons who are currently satisfying the requirements for membership in a local, national, or international labor organization. Members of a local union are considered to be members of any national or international union of which the local union is a part and of any federation with which the local, national, or international union is affiliated. A person is not considered a member under this definition if the only requirement for membership is a contribution to a separate segregated fund.

* * *

Petitioner's Reply Brief

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No. 81-1506

In the Supreme Court of the United States

OCTOBER TERM, 1981

FEDERAL ELECTION COMMISSION, ET AL., PETITIONERS,

v.

NATIONAL RIGHT TO WORK COMMITTEE, ET AL.,
RESPONDENTS.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

REPLY BRIEF FOR PETITIONERS

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In the Supreme Court of the United States

OCTOBER TERM, 1981

No. 81-1506

FEDERAL ELECTION COMMISSION, ET AL., PETITIONERS,

v.

NATIONAL RIGHT TO WORK COMMITTEE, ET AL.,
RESPONDENTS.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
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REPLY BRIEF FOR PETITIONERS

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1. NRWC's basic argument is that if the term "member," which determines the scope of solicitation by a separate segregated fund under 2 U.S.C. § 441b(b)(4)(C), is defined to exclude persons who the corporation believes evidence a "similar political philosophy," the Act infringes on those individuals' first amendment freedom of political association. However, as shown in our opening brief (pp. 30-33), the Act does not preclude those individuals from pooling their resources by forming or contributing to a political committee; nor does it preclude the organizers of NRWC from establishing an independent political committee, not supported by corporate funds, which could solicit contributions from anyone. Thus, Section 441b does not infringe upon the freedom of any individuals to associate for political purposes, but only prohibits the use of corporate money to subsidize a political committee soliciting support from the public. Accordingly, NRWC's reliance upon the protection of the right of individuals to associate is misplaced.

While thus focusing upon a constitutional analysis which is inapplicable to the issues of this case, NRWC has completely ignored the finding in *California Medical Assn.* v. *FEC*, 453 U.S. 182, 199 n.19 (1981), that Congress was justified in precluding organizations from subsidizing and controlling political committees soliciting contributions from broad segments of the public in order to prevent them from "influenc[ing] the electoral process to an extent disproportionate to their public support and far greater than the individual or group that finances the committee's operations would be able to do acting alone." As shown in our opening brief (pp. 31-33), it was for this compelling reason that Congress narrowly limited separate segregated funds financed by unions and corporations to soliciting only from individuals who make up the organization itself, and not from sympathetic members of the public.[1] NRWC has offered no reason whatsoever for reconsidering the analysis adopted in *California Medical Assn.* In fact, despite the extensive discussion of that decision in the Commission's opening brief, NRWC has not even mentioned it in its brief to this Court.

By simply conceding that Section 441b applies to it (Br. 14 n.4), NRWC attempts to divert the Court's attention from the true purpose and effect of the statute discussed above, and to obscure the fact that it has only agreed to accept the *benefit* accorded corporations under § 441b—the ability to subsidize totally its separate segregated fund with corporate monies. It is not willing to

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[1] NRWC notes (Br. 20 n.5) that Section 441b prohibits any corporation from "contributing" to a political committee, but fails to acknowledge that the large sums of corporate money used to subsidize all administration and solicitation costs incurred by a corporation's separate segregated fund are excluded from the definition of "contribution" under FECA, and Congress has not required them to be disclosed to the public. *See* our opening brief, p. 35 n.34. A significant portion of the funds which NRWC uses to subsidize ERCC's operations and solicitations was obtained from other corporations. *See* our opening brief, p. 37.

accept the condition which Congress has placed upon that benefit—that the subsidized solicitation be limited to individuals who actually make up the corporation, and not be extended to sympathetic members of the public. NRWC thus seeks a special privilege under the Act not shared by any other type of organization, which would permit it to wield the type of undue influence on the political process which this Court found FECA was intended to prevent in *California Medical Assn.* As the district court concluded, this argument "is in effect attacking the general proscription on corporate spending itself." Pet. App. 46a.

2.a. NRWC argues (Br. 36-45) that the term "members" in § 441b(b)(4)(C) is unconstitutionally vague.[2] It is well established that a statute will not be declared void for vagueness unless people "of common intelligence must necessarily guess at its meaning and differ as to its application...." *Cramp* v. *Board of Public Information*,

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[2] NRWC's allegations (Br. 42-46) of bias and procedural irregularity within the Commission were rejected by the district court (Pet. App. 51a-53a), and this finding was left undisturbed by the court of appeals. Thus, this issue is not properly before the Court. Moreover, although it raises the spectre of discriminatory enforcement, NRWC does not claim that the Commission has applied Section 441b(b)(4)(C) more leniently to others than to NRWC. It concedes (Br. 45) that, even taken together, the incidents it describes do not demonstrate any improper actions on the part of the individuals it suggests might be biased. At bottom, NRWC's description of the administrative proceedings shows only that the Commission declined to issue the advisory opinion NRWC desired after it discovered that NRWC had withheld relevant facts, and that the Commission declined to give NRWC specific instructions during the conciliation process as to how it should reorganize itself.

In any event, as the district court found (Pet. App. 53a), NRWC's accusations ignore the fact that both the advisory opinion issued to NRWC (AO 1976-79, 1 Fed. Elec. Camp. Fin. Guide (CCH) ¶ 5308), and the Commission's finding of probable cause to believe NRWC had violated the Act, were unanimous, and if there were any procedural errors in the administrative proceedings they were nonprejudicial since NRWC received a *de novo* review in the district court. *See* 2 U.S.C. § 437g(a)(6).

368 U.S. 278, 287 (1961); *Grayned* v. *City of Rockford*, 408 U.S. 104, 110 (1972). "The requirement of reasonable certainty does not preclude the use of ordinary terms to express ideas which find adequate interpretation in common usage and understanding." *Sproles* v. *Binford*, 286 U.S. 374, 393 (1932). *Accord Boyce Motor Lines* v. *United States*, 342 U.S. 337, 340 (1952) Even in statutes regulating political activities, "there are limitations on being both specific and manageably brief, and . . . although the prohibition may not satisfy those intent on finding fault at any cost, [it is enough that] they are set out in terms that the ordinary man using ordinary common sense can sufficiently understand and comply with . . . ." *Civil Service Commission* v. *National Assn. of Letter Carriers*, 413 U.S. 548, 578-79 (1973).

This Court has recognized that "member" is one of those terms which is not susceptible to definition "in absolute terms," or with the specificity of "mathematical formulas." *Killian* v. *United States*, 368 U.S. 231, 258 (1961). This does not mean that it is unconstitutionally vague, however, for the concept of membership in a private organization has a well accepted common meaning, repeatedly recognized by this Court, of a voluntary, contractual relationship between an individual and an organization, entailing mutual rights and obligations. Indeed, this Court recognized long ago that a member of a corporation, like a shareholder, "is a person who has agreed to become a member, and with respect to whom all conditions precedent to the acquisition of the rights of a member have been duly observed . . . ." *Burgess* v. *Seligman*, 107 U.S. 20, 30 (1883). *See also* cases cited in our opening brief, pp. 43-45.

The Commission's treatment of "members" in its regulations accords with this common understanding of the voluntariness and mutuality of a membership relationship. Thus, rather than attempting to prescribe a precise organizational structure to be utilized by every type of membership corporation in order to enjoy the benefits of § 441b(b)(4)(C), the Commission's regulation and inter-

pretive decisions adopt an approach which leaves it to each corporation to formulate its own organizational structure and methods of operation. The Commission's three part approach to determining "membership" under § 441b(b)(4)(C) requires only the minimal attributes of this voluntary contractual concept of membership in a private organization. Thus, the Commission has concluded that the standard is satisfied so long as the corporation has formally constituted itself as a membership organization, the individuals it claims as members have knowingly and voluntarily chosen to become members of the corporation, and they have assumed mutual rights and obligations in the organization.

In sum, the statute and the Commission's application of its terms clearly convey a commonly understood meaning which is constitutionally sufficient to guide the behavior of anyone seriously interested in obeying it, rather than in testing its outer limits by engaging in "brinksmanship." *See NLRB* v. *Gissel Packing Co.*, 395 U.S. 575, 620 (1969); *United States* v. *Wurzbach*, 280 U.S. 396, 399 (1930).[3] This Court has had no difficulty in construing "member," even in criminal statutes, in a manner that is "well understood in common parlance. . . ." *Scales* v. *United States*, 367 U.S. 203, 223 (1961). *See, e.g., Galvan* v. *Press*, 347 U.S. 522 (1954); *Killian* v. *United States*, 368 U.S. at 246-258. Thus, not only is the Commission's interpretation of membership not uncon-

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[3] The district court found that NRWC's violation of the Act was "knowing and willful," based primarily upon three circumstances: (1) NRWC's counsel was familiar with the Act and the legislative history of the 1976 Amendments, and had participated in the rulemaking proceeding during which the Commission's "membership" regulation was adopted; (2) NRWC attempted to obtain the FEC's approval of its solicitation without revealing that it had deliberately been organized without members; and (4) NRWC began its solicitations before the statutory exemption it relies upon went into effect. (Pet. App. 41a-44a.) This conclusion regarding NRWC's intent is a factual finding, which the court of appeals did not find to be clearly erroneous. *See Pullman-Standard* v. *Swint*, —— U.S. ——, 102 S. Ct. 1781, 1790 (April 27, 1982).

stitutionally vague, but it is supported by the "fundamental canon of statutory construction . . . that, unless otherwise defined, words will be interpreted as taking their ordinary, contemporary, common meaning." *Perrin* v. *United States*, 444 U.S. 37, 42 (1979). *Accord Burns* v. *Alcala*, 420 U.S. 575, 580 (1975).[4]

b. NRWC argues (Br. 20-22) that its articles of incorporation are written solely for purposes of state law, and are irrelevant under the Act. However, it is beyond dispute that the adoption of articles of incorporation in compliance with state law is a prerequisite to even qualifying to be a corporation, without which NRWC could not come within the provisions of Section 441b at all. A corporation which explicitly organizes itself in its charter as a nonmembership organization does not fall within the

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[4] Any doubts which a corporation may have about its rights and obligations under § 441b can be cleared up through the opportunity afforded by the Act for obtaining a binding advisory opinion from the Commission. *See* our opening brief, p. 42 n.41. By "offer[ing] a prompt means of resolving doubts" as to the statute's application in particular circumstances, the advisory opinion procedure "mitigates whatever chill may be induced by the statute." *Martin Tractor Co.* v. *FEC*, 627 F.2d 375, 384-385 (D.C. Cir.), *cert. denied*, 449 U.S. 954 (1980). *See also Seagram & Sons* v. *Hostetter*, 384 U.S. 35, 49 (1966). A number of corporations have successfully utilized the advisory opinion process to obtain prior determination of the permissible scope of solicitation of their membership under Section 441b(b)(4)(C). *See* AOs 1977-17; 1977-67; 1979-69; 1980-48; 1980-75; 1982-2; 1982-12, reported at 1 Fed. Elec. Camp. Fin. Guide (CCH) ¶¶ 5249, 5326, 5488, 5502, 5531, 5649, 5654, respectively.

As the district court found (Pet. App. 42a-43a, 51a-52a), NRWC's failure to obtain such an advisory opinion in a timely manner was due primarily to its repeated abuse of that procedure. NRWC's initial advisory opinion request concealed the fact that its corporate documents specifically precluded it from having members. When NRWC later renewed its request for an advisory opinion, it did not inform the Commission that it had already conducted the solicitation it was asking about. As the district court concluded, "NRWC specifically asked the FEC to sanction its claim without providing the agency with facts highly relevant to a determination." Pet. App. 44a.

provision of the Act applicable to membership corporations any more than a corporation which organizes itself in its charter as a nonstock corporation falls within the provision of the Act applicable to stock corporations.[5]

Contrary to NRWC (Br. 20-22) and the court of appeals (Pet. App. 5a-6a), there is nothing inconsistent in the Commission's position that articles of incorporation which preclude membership are alone sufficient to prevent a corporation from falling within § 441b(b)(4)(C), while articles of incorporation which provide for membership are not alone sufficient to permit solicitation under § 441b(b)(4)(C). The mere fact that a corporation has empowered itself to have members does not establish that it has exercised that power, and does not identify which individuals have become members of the corporation, and thus solicitable for political contributions. The second and third factors identified by the Commission are designed to answer these latter questions, once the corporation has made the threshold showing that its corporate documents permit it to operate as a membership organization at all. Thus, NRWC's argu-

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[5] Section 13.1-211 of the Virginia Nonstock Corporation Act, pursuant to which NRWC was incorporated, provides in part:

> "[I]f the corporation has one or more classes of members, the designation of such class or classes and the qualifications and rights of the members of each class shall be set forth in the articles of incorporation."

NRWC concedes (Br. 5 n.2) that the first document in which it even claimed to have "active" and "supporting" members was its request to the Commission for an advisory opinion permitting it to solicit those individuals under 2 U.S.C. § 441b(b)(4)(C). Thus, NRWC has failed to qualify as a membership corporation under the law of the state in which it chose to incorporate.

The "standards" which NRWC claims to have for determining who it will treat as a member (Br. 3, 4) are similarly ephemeral. As shown in our opening brief (p. 4), NRWC stipulated that it has no written standards for membership. Rather, membership criteria vary from questionnaire to questionnaire, based upon apparently unreviewable oral instructions from NRWC's president to the membership director. (J.A. 58.)

ment that the Commission considers state law to control the interpretation of Section 441b(b)(4)(C) is erroneous.

c. In its brief to this Court, NRWC advocates a definition of "member" which, unlike the approach adopted by the Commission and the district court, bears no resemblance to the common understanding of the term, and would contravene congressional intent by expanding the solicitation rights of nonstock corporations far beyond those afforded stock corporations and unions. NRWC contends that the first amendment and the legislative history of the statute require that it be permitted to treat as its members any group of individuals that is "distinguishable from the general public." (Br. 19-20, 35).[6] This interpretation of membership, which is so broad as to be virtually meaningless, is supported by neither the case law upon which NRWC relies nor the legislative history of the Act.

Contrary to NRWC's contention (Br. 16-18), *Buckley* v. *Valeo*, 424 U.S. 1, 66 (1976), did not purport to hold that the term "members" means the same thing as "contributors"; rather, it held that the first amendment protects the freedom to associate through contributions as well as the freedom to associate through membership. Since, as noted *supra*, pp. 1-3, § 441b regulates the use of corporate funds, and does not preclude the individuals on NRWC's membership list from freely associating by pooling their contributions in a political committee which is *not* subsidized by corporate funds, the cases on which NRWC relies are inapposite to the interpretation of "member" as used by Congress in this particular statutory provision.[7]

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[6] NRWC's claim (Br. 24 n.10) that the Commission should not be permitted to question NRWC's assertion that the people it solicits have "a similar political philosophy with the corporation" also amounts to a contention that NRWC must be permitted to solicit anyone it chooses.

[7] It should be noted, however, that even this rationale would not extend to the individuals on NRWC's "supporting member" list, who

Similarly, the legislative history upon which NRWC relies (Br. 29-36) does not support its assertion (Br. 35) that "Congress intended that corporations and labor organizations be permitted to solicit all persons 'related to' the organizations . . . as distinguished from members of the general public." Rather, the plain terms of the Act clearly demonstrate that the result of the extensive debates in 1976 about the proper scope of solicitation by separate segregated funds was a congressional decision to eliminate the ambiguity which had given rise to the Commission's disfavored decision in *SUN-PAC* [8] by explicitly spelling out in the statute the particular relationship which would qualify each type of organization to solicit political contributions—members of unions and their families; stockholders, executive and administrative personnel of corporations and their families; and members, executive and administrative personnel of nonstock membership corporations, and their families.[9] The cate-

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have not contributed to NRWC, but have merely returned a questionnaire with answers that NRWC's president considers to evidence sympathy with NRWC's goals. A mere expression of sympathy with an organization's goals does not make one a member of the organization in any normal sense of the word. *See Killian v. United States*, 368 U.S. at 257-258; *Bridges v. Wixon*, 326 U.S. 135, 142-143 (1945).

[8] Advisory Opinion 1975-23, 1 Fed. Elec. Camp. Fin. Guide (CCH) § 5151.

[9] NRWC uses the 1976 legislative history primarily to support the argument that Congress actually decided to adopt the Commission's SUN-PAC decision, and expanded it to apply to "every type of organization covered by § 441b" (Br. 30). However, the court of appeals panel in this case did not adopt this argument. In fact, two of the members of this panel joined in the subsequent decision in *International Assn. of Machinists* v. *FEC*, 678 F.2d 1092 (D.C. Cir. 1982) (en banc), *appeal docketed*, No. 82-284 (August 19, 1982), in which a unanimous *en banc* court extensively reviewed the 1976 legislative history and concluded that "(1) Congress intended to overrule the SUN-PAC decision in substantial part. . .; (2) there was a general consensus that the amendments achieved this purpose and did so equitably." 678 F.2d at 1103.

gories assigned to labor unions and stock corporations cannot rationally be stretched to include any group of individuals distinguished from the general public only by their sympathy for the goals of the organization, and there is no basis for concluding from the legislative history that such a broad exemption was intended for nonstock corporations.

As noted in our opening brief (p. 33 n.32), however, the Act permits labor unions as well as membership corporations to solicit political contributions from their "members". If this statutory language is distorted to permit NRWC to use corporate funds to solicit as a "member" anyone it identifies as being in sympathy with NRWC's political goals, even though they are not granted any other membership rights, the impact on the present statutory structure would be profound. Neither NRWC nor the court of appeals has suggested any principled reason, consistent with their interpretation of the statutory language, for denying unions the comparable right to solicit political contributions to their separate segregated funds from any member of the public who the unions identify as being sympathetic to their political goals, even though they are not granted other membership rights by the union. Moreover, stock corporations might argue that they should be able to achieve the same result by contributing their money to a nonstock corporation, which could use that money, as NRWC has done, to solicit political contributions from sympathetic segments of the public at large. This result would effectively permit separate segregated funds to solicit contributions on the same scale as unsubsidized political committees, contrary to the view of the statute adopted by this Court:

> [M]ulticandidate political committees are generally unrestricted in the manner and scope of their solicitations [while] the segregated funds that unions and corporations may establish pursuant to § 441b(b)(2)(C) are carefully limited in this regard. [These]

> differing restrictions . . . reflect a judgment by Congress that these entities have differing structures and purposes, and that they therefore may require different forms of regulation in order to protect the integrity of the electoral process.

California Medical Assn. v. *FEC*, 453 U.S. at 201.

CONCLUSION

For the foregoing reasons, and the reasons stated in our opening brief, the decision of the court of appeals should be reversed, and the case should be remanded with instructions to affirm the district court's decision.

Respectfully submitted,

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OCTOBER TERM, 1981

FEDERAL ELECTION COMMISSION, *et al.*,
Petitioners,

v.

NATIONAL RIGHT TO WORK COMMITTEE, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

MOTION FOR LEAVE TO FILE A BRIEF AMICUS CURIAE AND BRIEF FOR THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS AS AMICUS CURIAE

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MOTION BY THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS FOR LEAVE TO FILE A BRIEF AMICUS CURIAE

The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), respectfully moves this Court for leave to file the accompanying brief *amicus curiae* in support of the position of the petitioners in this case.

INTEREST OF THE AFL-CIO AND THE ISSUE TO BE COVERED IN THE ATTACHED BRIEF AMICUS CURIAE

The AFL-CIO is a federation of 101 national and international unions having a total membership of 14,500,000 working men and women. The AFL-CIO itself and its affiliates are regulated by the provision of the Federal Election Campaign Act at issue in this case—2 U.S.C. § 441b. The AFL-CIO has two interests in the outcome of this controversy. First because unions are membership organizations they will be directly affected by the answer to the central question in this case—what is the meaning of the term "member" as used by Congress in that provision. Second, because unions are true membership organizations, they cannot, in contrast to respondents, structure their affairs to attempt to take what is beneficial in § 441b without assuming corresponding obligations to their members. The decision below by permitting non-stock corporations such an option changes the balance between different classes of organizations Congress struck in § 441b.

Consistent with those interests the attached brief *amicus curiae* is devoted to demonstrating: first, that the court of appeals' airy rejection of the relevance of state law in defining the term "member" as used in § 441b(b)(4)(C) is directly contrary to Congress' intent in enacting the FECA; second, that the result is an anomalous grant to non-stock corporations and those entities alone of a privilege to spend unlimited amounts to solicit political contributions from individuals who have no legally recognized relationship with the soliciting organization; and, third, that the court of appeals' statement of the First Amendment principles applicable here is directly contrary to this Court's statement of those principles in *California Medical Assn.* v. *FEC*, 453 U.S. 182.*

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* This motion and the accompanying brief *amicus curiae* were due on June 21, 1982. Because of the circumstance that the under-

CONCLUSION

For the above stated reasons this motion for leave to file a brief *amicus curiae* should be granted.

Respectfully submitted,

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signed counsel of record is also counsel for a group of unions that are filing such a motion and brief in *Connick* v. *Myers* (No. 81-1251), also due on June 21, this motion and brief are being filed on June 22 and are being served by hand on counsel for the parties the same day. Thus, said motion and brief will be received prior to the time they would have been received had they been filed and served by mail on June 21. Because of the service by hand, the filing of this motion on June 22 rather than June 21 will not prejudice respondents' ability to respond nor delay this Court's consideration of the case. In light of the substantial interest of the AFL-CIO in participating herein, we urge that this motion be granted despite our failure, which we regret, to file until June 22.

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BRIEF FOR THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS AS AMICUS CURIAE IN SUPPORT OF PETITIONERS

This brief *amicus curiae* is filed contingent on the granting of the foregoing motion for leave to file said brief. The interest of the AFL-CIO in this case is set forth in that motion.

INTRODUCTION AND SUMMARY OF ARGUMENT

The Federal Election Campaign Act of 1971, as amended, permits a non-stock corporation to defray from general treasury money the cost of soliciting the corporation's "members" to contribute to the corporation's political committee and prohibits such corporation from using such money to pay the costs of soliciting non-members for such contributions. 2 U.S.C. § 441b.

The court of appeals in its decision under review stated "[w]e see absolutely no justification for applying a state law standard * * * [for defining] 'members' in non-stock corporations * * *" and that instead "[w]e think that the Act requires a uniform definition." Pet. App. 5a, 6a. In working out that definition, that court opined:

> The first amendment clearly protects political expression in the form of association and solicitation. * * * But these activities are not protected absolutely, and they may be regulated if the state demonstrates a sufficiently important interest and employs means closely drawn to avoid unnecessary abridgement of associational right. * * * [W]e believe that solicitation, without more, will neither corrupt officials nor distort elections. In our view, contribution limitations and disclosure provisions are a more direct and less restrictive way to prevent or at least to expose any sort of *quid pro quo* arrangements. * * * We therefore fail to see how the interests asserted by the FEC are served by restricting NRWC's solicitation activities. [Pet. App. 7a-9a.]

On this basis the court of appeals held that the term "members" in § 441b(b)(4)(C) "embraces at least those individuals whom NRWC describes as its active and supporting members * * *." [Pet. App. 10a.]

In the argument that follows, we show: first, that the court of appeals' airy rejection of the relevance of state corporation law in defining the term "members" as used in § 441b(b)(4)(C) is directly contrary to Congress' intent in enacting the FECA; second, that the result is an anomalous grant to non-stock corporations and those entities alone of a privilege to spend unlimited amounts to solicit political contributions from individuals who have no legally recognized relationship with the soliciting organization; and third, that the court of appeals' statement of the First Amendment principles applicable here is directly contrary to this Court's statement of those principles in *California Medical Assn.* v. *FEC*, 453 U.S. 182.

ARGUMENT

I. The Facts.

In the instant case the district court found on the basis of "stipulat[ions]" and of the facts "otherwise clearly defined by discovery" (Pet. App. 17a) as follows:

> The NRWC is a non-profit corporation without capital stock incorporated under the laws of Virginia. Its stated purposes as set out in the articles of incorporation are "[t]o help make the public aware of the fact that American citizens are being required, against their will, to join and pay dues to labor organizations in order to earn a living," and that compulsory unionism violates fundamental rights.
>
> * * * The Committee's articles of incorporation specifically provide that it shall not have members. A board of directors is authorized to govern and manage the corporate affairs. The board is self-perpetuating; new directors are elected by majority vote of the existing board of directors. The initial board members were named directly in the articles of incorporation.
>
> * * * The Committee's bylaws contain no reference to members or membership and make no reference to any standards or criteria for membership or any rights or obligations of members. No formal corporate papers exist which describe the rights, duties, and benefits of membership in NRWC.
>
> * * * *
>
> * * * The Committee claims a membership in excess of 1 million persons. This claimed membership strength is built on solicitations addressed to potential supporters of its mission. To locate such supporters, it buys, rents, and otherwise obtain mailing lists. Letters are then sent to individuals on the lists. * * * While the letters are ostensibly sent to persons sympathetic to the Committee's cause, because of the source of the addressee's name, this cannot be definitely determined in advance. The "membership

solicitation letters" are initiated by the NRWC on a regular basis and in large numbers. * * *

A typical letter explains the evils of compulsory unionism and outlines NRWC's efforts to combat it through legislative action. A questionnaire is enclosed with the letter, posing general inquiries about the reader's attitude toward compulsory unionism. A space is included in the questionnaire where a person may indicate the amount of any contribution, followed by a statement that the contribution will be used to compile and publish the results of the questionnaire or to secure the passage or defeat of a particular piece of legislation.

The letters and the questionnaire do not invite the recipient to join nor do they discuss any aspect of membership in the NRWC. Indeed, nothing is recited as to how a recipient may accept or become a member. Nonetheless, recipients who respond favorably to the inquiries, which counsel for NRWC admitted are framed to elicit favorable responses, are then sent membership cards. The questionnaires vary from mailing to mailing, and the standards regarding correct responses needed to qualify for membership are set by NRWC's president, who passes them on to the Membership Director. NRWC admits that these standards are seldom, if ever, put in writing.

The Committee recognizes two classes of "members": those who respond to the questionnaire and contribute money are deemed "active members"; those who merely respond to the questionnaire without a contribution are classified as "supporting members." On the approximate anniversary of their last donation to NRWC, all past contributors (active members) receive a new membership card and a renewal notice thanking them for their past support and requesting an additional contribution. Those who do not respond receive a second, and if necessary, a third notice. Even if these appeals are unanswered, the unresponsive are maintained on NRWC's rolls as "active members." Those who fail to contribute for two

> successive years are reduced in status to "supporting members." Such a member apparently retains that status indefinitely without taking any affirmative steps.
>
> * * * To terminate affiliation a person must contact the Committee and request to be removed from the membership lists. Those who do so are sent a letter asking them to reconsider, and in the event that they still wish to drop their membership, to complete and return an enclosed form. If the NRWC receives no response to this appeal, the person's name is stricken within "probably, four weeks" of the initial request. None of the foregoing procedures or distinctions has ever been described in the materials mailed to present or prospective members. Nor have they been included in the articles of incorporation or bylaws of the NWRC. [Pet. App. 16a-20a.] [1]

Thus, there is no connection recognized by the corporate law of the state of NRWC's incorporation, and only the most evanescent connection of any kind shown by the facts, between NRWC and those whom NRWC has chosen to denominate "members" to further NRWC's position in this case.

II. The Statutory Framework.

The Federal Election Campaign Act of 1971, as amended, 2 U.S.C. § 431 *et seq.* (FECA or Act), regulates the financial aspects of federal elections and most particularly the making of "contributions" and "expenditures" as those terms are defined therein (§§ 431(8) & (9)). The Act's purpose is: "the prevention of corruption and the appearance of corruption spawned by the real or imagined coercive influence of large financial

---

[1] The court of appeals' sole references to the facts are in one paragraph of text (Pet. App. 2a-3a) and in two short footnotes (Pet. App. 2a, n.1; 5a, n.4). Those references, while incomplete, are in no way contrary to the district court's findings, nor did the court of appeals at any point even suggest that the district court's findings are clearly erroneous, the precondition for overturning such findings under Rule 52(a) Fed. R. Civ. Pro.

contributions on candidates' positions and on their actions if elected to office." *Buckley* v. *Valeo*, 424 U.S. 1, 25.

To that end, the FECA requires that all "contributions" be received by a "political committee." 2 U.S.C. § 432. That term encompasses entities established by individuals and unincorporated associations, and entities ("separate segregated funds") established and administered by corporations and labor organizations. 2 U.S.C. § 431(4).

Political committees that support more than one candidate (other than separate segregated funds) are regulated by § 441a of the Act. Under that provision, such committees may only accept contributions totaling $5,000 per year from any one contributor, including the organizational sponsor, if any, of the committee. 2 U.S.C. § 441a(a)(1)(C). The contribution limits of § 441a(a)(1)(C) apply to in-kind contributions of administrative support as well as to contributions of funds. 2 U.S.C. § 431(8)(A).

The law regulating separate segregated funds is more complex. The basic rule stated in § 441b of the Act is that contributions and expenditures from general treasury funds by corporations and labor organizations are strictly prohibited. 2 U.S.C. § 441b(a). Congress has seen fit, however, to create certain exceptions to this otherwise total exclusion of corporations and labor organizations from the federal election process. Thus, § 441b(b)(2)(C) of the Act permits corporations and labor organizations to establish separate segregated funds (commonly known as political action committees or PACs) that may receive and make contributions in connection with federal elections for the most part in the same manner and subject to the same limits as to the source and amount of contributions as any other political committee. But corporations and labor organizations and their separate segregated funds, unlike individual and association sponsors

of political committees and their committees, are limited in their solicitation efforts to narrow classes of individuals—stockholders and executive or administrative personnel and their families in the case of stock corporations, members and their families in the case of labor organizations, and members (and executive or administrative personnel and their families) in the case of non-stock corporations. 2 U.S.C. § 441b(b)(4)(A)&(C). On the other hand, corporations and labor organizations are permitted without limitation to use general treasury funds to pay their solicitation costs. 2 U.S.C. §§ 441b(b)(2)(C). The point of § 441b was stated in the Report of the Committee on House Administration on the 1976 Amendments to the FECA:

> The general rule enacted in 1971 is that "corporations and labor unions [must] confine their activities [of a political nature] to their own stockholders and members, the beneficial owners of these organizations," and the present statutory law not only draws a line between corporate and union political activities financed by treasury money limited to stockholders and members, which are permitted, and other treasury financed political activities, which are prohibited, but [through the 1976 FECA Amendments] does so by spelling out rules that Congress believes "apply equally to labor unions and corporations." [H.R. Rep. No. 94-917, 94th Cong., 2d Sess. 7, *Legislative History of Federal Election Campaign Act Amendments of 1976*, (G.P.O. 1977) at 807 (hereinafter FECA 1976 Leg. Hist.)]

Section 441b(b)(4)(C), at issue in this case, is thus a component part of a comprehensive legislative scheme designed to protect the integrity of the federal election process without, in Congress' judgment, interfering with the ability of corporations and labor organizations to protect the interests of their "beneficial owners." As stated in *California Medical Assn.* v. *FEC*, 453 U.S. 182, 201, the system of carefully balanced regulations concerning contributions stated in §§ 441a & 441b "* * * re-

flect[s] a judgment by Congress that [the various] entities [covered thereby] have different structures and purposes and that they therefore may require different forms of regulations in order to protect the integrity of the electoral process."

III. The Threshold Requirement For A Person To Be Considered A "Member" of A Corporation For Purposes of § 441b(b)(4)(C) Is That Such Person Be A "Member" Under the Corporate Law of The State in Which The Corporation Is Incorporated.

A. Section 441b(b)(4)(C) was added to the Act as part of the 1976 Amendments to the FECA. Senator Allen, who sponsored the amendment, explained that his purpose was to "cure an omission" in § 441b by allowing non-stock corporations a privilege with regard to soliciting political contributions analogous to that granted to stock corporations:

> MR. ALLEN. Mr. President, all this amendment does is to cure an omission in the bill. It would allow corporations that do not have stock but have a membership organization, such as a cooperative or other corporations without capital stock and, hence, without stockholders, to set up separate segregated political funds as to which it can solicit contributions from its membership; since it does not have any stockholders to solicit, it should be allowed to solicit its members. That is all that the amendment provides. It does cover an omission in the bill that I believe all agree should be filled.
>
> I have talked to the distinguished manager of the bill and I think I am correct in saying that he agrees to the adoption of the amendment.
>
> I yield to the distinguished Senator from Nevada.
>
> MR. CANNON. Mr. President, the Senator has discussed that amendment with me. I think it covers a void that is not present in the bill and certainly is

> proper and should give those organizations the same opportunity that we have given to other organizations in the bill, and I am willing to accept the amendment.
>
> The PRESIDING OFFICER. The question is on agreeing to the amendment.
>
> The Amendment was agreed to. [FECA 1976 Leg. Hist. 464.]

Senator Allen's statement indicates that Congress, in adding that provision, recognized an identity between stock corporations in their relationship with their stockholders and non-stock corporations in their relationship with their members and sought to express that equation in the campaign law. There is not a single indication that non-stock corporations were to be accorded broader rights. That being so and in light of the fact that Congress did not define the term "members" in the Act nor do more than allude to that question in the legislative history, it is proper, we believe, to look to the clear determination Congress made with regard to the meaning of the parallel term "stockholder."

The Conference Report on the 1976 FECA Amendments states: "The conference substitute does not define the term 'stockholder.' It is intended that in this regard the normal concepts of corporate law shall be controlling." H.R. Rep. No. 94-1057, 94th Cong., 2d Sess. 64; FECA 1976 Leg. Hist. at 1058. In the debate on that Conference Report, Senator Scott, the Minority Leader of the Senate, and Senator Cannon, the Chairman of the Senate Rules Committee and the floor manager of the legislation, engaged in a colloquy with respect to the Conferees' intent as to the meaning of "stockholder." In response to a question from Senator Scott, Senator Cannon stated:

> * * * The conferees did not attempt to work out a description because generally the term stockholder is determined by looking at the particular State law.

> Certainly, if an individual has a vested beneficial interest in the stock, with the normal rights to vote and to receive dividends, if any, and to share in the profits or losses of the company in proportion to his or her percentage of ownership, all of which would accrue to an individual under the general principles of corporate law, then such an individual certainly would be considered to be a stockholder.
>
> The conferees, as I said, did decide against an attempt to define that term and to leave the matter to the normal concepts of corporate law.
>
> * * * *
>
> * * * If [the individuals] have a vested interest in the stock and the right to vote whatever proportionate shares they have under a stock ownership plan or whatever it may be, obviously they would be a stockholder within the meaning of the term. As I said, most State laws define in their own corporate law structure what constitutes a stockholder. [FECA 1976 Leg. Hist. at 1111.]

The foregoing illuminates the single discussion of the proper scope of application of § 441b(b)(4)(C). Senator Allen asked Senator Cannon whether an incorporated mutal life insurance company could solicit its policyholders as "members" under that provision. Senator Cannon's response was not an unequivocal "yes" or "no", but rather, "[i]f the policyholders are members *within the definition of that type of an organization* then they could be solicited under that provision of the law." FECA 1976 Leg. Hist. at 1108 (emphasis added). We have seen that the point of § 441b as a whole is to restrict the spending of corporate general treasury money to activities aimed at the corporation's "beneficial owners," (p. 7, *supra*), that the point of § 441b(b)(4)(C) is to grant non-stock corporations a privilege with regard to soliciting for political contributions equivalent to that of stock corporations (p. 8, *supra*) and that the point of the legislative history on the cognate term "stock-

holder" is that the primary determinant of that status is state general corporate law. It follows, as Senator Cannon said, that the first requisite for "membership" in a non-stock corporation is that the individual be a "member" under the governing state corporate law—the law that in Congress' mind was to be the primary source for the "definition [of that term] for that type of organization."

Congress' approach to defining the term "stockholder" is but one example of its overall approach to such questions in framing the FECA—to use to the extent possible, and where not otherwise specified,[2] generally applicable legal principles as the backdrop for its regulation of federal elections. That, of course, is the approach that provides the maximum measure of neutrality in the rules that govern the highly partisan subject of election financing. Thus, the definition of "labor organization" in § 441b(b)(1) is word for word the long-standing definition of that term in § 2(5) of the National Labor Relations Act, as amended, 29 U.S.C. § 152(5). And, the definition of the term "executive or administrative personnel" in § 441b(b)(7) draws on that of the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.*, because as Senator Cannon explained the sponsors "were trying to use terms that have a general, commonly recognized

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[2] Congress did specify, for example, that stockholders of member corporations of a trade association are under specified conditions to be deemed stockholders of the trade association as well and that members of labor organizations affiliated with a federation of labor organizations are to be deemed members of that federation as well. 2 U.S.C. § 441b(b)(4)(D) and FECA 1976 Leg. Hist. at 1057; 11 C.F.R. 114.1(e) and Legislative History of Federal Election Campaign Act Amendments of 1974 (G.P.O. 1977) at 1108. By so doing, Congress stated an FECA rule directly binding on the Commission and the courts without regard to any other law. But Congress did not thereby enlarge the total class of individuals who may be solicited under § 441b; the FECA merely permits the same limited group to be solicited by two tiers of organizations rather than one.

meaning [to] eliminate any confusion * * *." FECA 1976 Leg. Hist. at 1094.

In sum, in each instance that Congress directed its attention to a term that determines the scope of the right to solicit for political contributions under § 441b, Congress deliberately chose to begin by borrowing existing legal definitions rather than by authorizing the FEC or the courts to develop from scratch special FECA meanings. Where existing federal law provided an apt referent that was adopted; where not, Congress looked to existing state law. And since "non-stock" corporations are creatures of state law, Congress has made manifest its intent "to accomplish [its purpose] by application of settled state rules as to what constitutes ['a member of a nonstock corporation'] so long as it is plain * * * that the state rules do not run counter to the terms of the Act." *R.F.C.* v. *Beaver County*, 328 U.S. 204; 210. See also *Board of Comm'rs* v. *U.S.*, 308 U.S. 343.

And it is plain that the minimal requirements concerning membership imposed by Virginia law on nonstock corporations do not run counter to the terms of the FECA. Section 441b was framed to recognize associational rights by permitting organizations to communicate with their "beneficial owners" and was intended to treat corporations and unions in an evenhanded fashion. See p. 7, *supra*. By no stretch of the imagination can Virginia law be said to cut off a corporation from its "beneficial owners" or to impose more limiting rules on nonstock corporations than the rules governing stock corporations and unions. For this reason, there is no need here to explore the extent to which FECA rules may be required to supplement state law where the latter is not sufficient to assure compliance with the overall regulatory purposes of the federal election laws. For in this case there is no member relationship recognized by any law, federal or state, between NRWC and the individuals

solicited for political contributions. Thus the court of appeals' ruling that state law is not even to be consulted is the precise opposite of what Congress intended.

B. The court of appeals' reading of § 441b grants non-stock corporations, or at least non-stock corporations such as NRWC, an unrestricted privilege to defray the cost of soliciting "individuals who share a similar political philosophy and who have evidenced a willingness to promote that philosophy through support" of the other activities of the corporation (Pet. App. 10a), and who otherwise have no ties to the corporation. The result is an absurd anomaly: non-stock corporations and those corporations alone among all entities regulated by the FECA are permitted to spend unlimited sums of money to solicit political contributions from individuals who have no recognized legal relationship to the entity. That anomaly, as its opinion makes clear, rests in large part on the lower court's presupposition that the First Amendment requires such a permission. See Pet. App. 7a-10a. That presupposition is refuted by this Court's statement of the governing law in *California Medical Assn., supra.*

In that case the Court upheld against a First Amendment challenge § 441a(a)(1)(C), the provision regulating the amount an unincorporated association may spend to, *inter alia*, solicit contributions from its members and from the general public to a political action committee sponsored by the association. Justice Marshall, speaking for himself and Justices Brennan, White and Stevens, stated:

> We * * * disagree with appellants' claim that the contribution restriction challenged here does not further the governmental interest in preventing the actual or apparent corruption of the political process. Congress enacted § 441a(a)(1)(C) in part to prevent circumvention of the very limitations on contributions that this Court upheld in *Buckley*. Under the Act, individuals and unincorporated associations such as CMA may not contribute more than $1,000 to any single candidate in any calendar year. 2

> U.S.C. § 441a(a)(1)(A). Moreover, individuals may not make more than $25,000 in aggregate annual political contributions. 2 U.S.C. § 441a(a)(3). If appellants' position—that Congress cannot prohibit individuals and unincorporated associations from making unlimited contributions to multicandidate political committees—is accepted, then both these contribution limitations could be easily evaded. Since multicandidate political committees may contribute up to $5,000 per year to any candidate, 2 U.S.C. § 441a(a)(2)(A), an individual or association seeking to evade the $1,000 limit on contributions to candidates could do so by channelling funds through a multicandidate political committee. Similarly, individuals could evade the $25,000 limit on aggregate annual contributions to candidates if they were allowed to give unlimited sums to multicandidate political committees, since such committees are not limited in the aggregate amount they may contribute in any year. These concerns prompted Congress to enact § 441a(a)(1)(C), and it is clear that this provision is an appropriate means by which Congress could seek to protect the integrity of the contribution restrictions upheld by this Court in *Buckley*. [453 U.S. at 197-199.]

And, Justice Blackmun, while not joining in that portion of the opinion, concurred in the conclusion that § 441a(a)(1)(C) is constitutional insofar as the provision applies to multicandidate political committees but did not in the conclusion that the provision may, consistent with the First Amendment, be applied to "political committees established for the purpose of making independent expenditures rather than contributing to candidates." *Id.* at 202-204.[3]

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[3] Justice Stewart's dissent joined by the Chief Justice, Justice Powell and Justice Rehnquist was directed to a demonstration that the appeal in that case should be "dismissed for want of jurisdiction." 453 U.S. at 204-209. That dissent therefore did not treat with the questions of § 441a(a)(1)(C)'s constitutionality.

The instant case does concern a claim of the right to make in-kind contributions to a political committee that in turn contributes to candidates. Thus, *California Medical Association* shows that the court of appeals was entirely wrong in the premise central to its decision (Pet. App. 8a)—that the interest in preventing the "actual or apparent corruption of the political process" is not a government interest that justifies such a restriction.

To be sure, the restriction stated in § 441b at issue here is different in its details from that at issue in *California Medical Assn.* See p. 13, *supra*. In general, though, it would appear that despite its limitation on who may be solicited, the privilege in § 441b(b)(4)(C)—which places no dollar limit on the amount a non-stock corporation may spend in soliciting its members—is comparable in effect to the absolute $5,000 spending limit for such solicitations on individuals, partnerships, and unincorporated associations stated in § 441a(a)(1)(C). Indeed, in its brief in opposition to the petition for a writ of certiorari NRWC does not even argue that with respect to the issue here—the right to pay the costs of soliciting individuals for contributions to a particular political committee—the permission provided in § 441b is more restrictive than that provided in § 441a.

Rather, NRWC's constitutional argument is simply that organizations are constitutionally entitled to solicit those whom they regard as "members" for FECA purposes, although for no other purposes. NRWC refers to such solicitations as "the internal communications of an organization" (Br. in Opp. 9), invoking *United States* v. *CIO*, 335 U.S. 106. But the Constitution does not require Congress to disregard realities and to treat as "members" of an organization individuals who have no legal connection therewith, but who only, at some time "contribute[d] monetarily" to the organization (Br. in Opp. 8). Thus there is no substance to NRWC's contention that the right of association recognized in the Con-

stitution requires that the basic limit Congress wrote in § 441b—that a non-stock corporation may not solicit those whom the applicable state corporation law does not recognize as "members"—be declared inapplicable to NRWC.

Since NRWC does not raise, and indeed disclaims (Br. in Opp., 10, n.11) any other constitutional challenge to § 441b, the resolution of such other objections as there may be to that provision (some of which are weighty) should await their proper invocation. While there is a readily apparent explanation for this omission by NRWC —that organization seeks the privilege granted by § 441b (b) (4) (C) free of the limitation that the privilege applies only to communications between a corporation and its beneficial owners—this Court need not and should not accommodate those who engage in such litigation strategies by reaching out to decide constitutional issues not properly presented.

CONCLUSION

For the above stated reasons the decision below should be reversed.

Respectfully submitted,

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Amicus Brief

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No. 81-1506

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

FEDERAL ELECTION COMMISSION, *ET AL.*,

Petitioners,

v.

NATIONAL RIGHT TO WORK COMMITTEE, *ET AL.*,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE PUBLIC SERVICE RESEARCH COUNCIL AND PUBLIC SERVICE POLITICAL ACTION COMMITTEE AS *AMICUS CURIAE*

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BRIEF FOR THE PUBLIC SERVICE RESEARCH COUNCIL AND PUBLIC SERVICE POLITICAL ACTION COMMITTEE AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENTS

STATEMENT OF INTEREST

The Public Service Research Council (the "PSRC") is a nonprofit corporation organized and operating under the laws of Virginia, with its principal office located at 8330 Old Courthouse Road, Suite 600, Vienna, Virginia 22180.

The PSRC, as an independent national citizens' organization,[1] is engaged in nonpartisan research and education

[1] PSRC is a social welfare organization exempt from taxation pursuant to Section 501(c)(4) of the Internal Revenue Code.

concerning public sector unionism and its impact upon the nation's governmental institutions at the local, state and federal levels. A PSRC division, Americans Against Union Control of Government, functions as a citizens' lobby on legislative issues involving public sector unionism.

The PSRC sponsors the Public Service Political Action Committee (the "PSPAC"), which aids candidates for public office, regardless of political party affiliation, whose positions on public sector unionism are in accord with those of the PSRC.

The interest of the *amicus* derives from PSRC's continuing concern with the protection of First Amendment guarantees, and from its participation in the underlying administrative action before the Federal Election Commission (the "Commission" or "FEC") and participation in the case below. In Matter Under Review Number 290 (1976) the PSRC and the PSPAC were named as respondents along with the National Right to Work Committee (the "NRWC") and its political action committee, the Employee Rights Campaign Committee (the "ERCC"). The predicate of both the administrative complaint and the resulting position of the Commission appeared to be that the Articles of Incorporation, regulated by state law, of the PSRC and NRWC did not provide for corporate members. The FEC argued that since neither organization had provided formally for corporate members *per se*, each respective political action committee, the PSPAC and ERCC, was prohibited from soliciting those individuals recognized as members by the sponsoring organization.

After the PSRC amended its Articles of Incorporation to provide for members, the FEC changed its position

and continued to refuse to permit the PSPAC from soliciting such members. Instead, the FEC sued the PSRC and PSPAC to, among other things, enjoin solicitation of those members recognized by the PSRC, and by the Commonwealth of Virginia under corporate law.

After approximately two years of proceedings in this case, the PSRC and PSPAC executed a consent decree with the Commission. In return for the Commission's discontinuing the action, the decree places various limitations on the PSPAC in soliciting the participation of PSRC members—all of which are unclear.

The disposition of the instant case will affect the rights of political association of all individuals related in any way to the PSRC and its political action committee. The PSRC and PSPAC thus have a vital interest in the outcome of this proceeding.

All of the issues in this case, as expressed by Judge Thornberry in the lower court opinion, *Nat. Right to Work Com. v. Fed. Election Com'n*, 665 F.2d 371 (D.C. Cir. 1981), are important to the PSRC, PSPAC, and their members. For purposes of this *amicus* brief, however, the PSRC and PSPAC will restrict themselves to a statement of their experience with the Commission's arbitrary and capricious search for a definition of the term member and to addressing the issue of whether a state law definition of members for corporations without capital stock can, consistent with the First Amendment, be determinative in any way of the political rights of membership organizations and their respective members under the Federal Election Campaign Act of 1971, as amended. The PSRC and PSPAC believe it cannot.

For the above reasons, the PSRC and PSPAC submit their brief *amicus curiae* in support of respondents.

SUMMARY OF ARGUMENT

1. The PSRC took repeated steps to comply in good faith with the terms of the Campaign Act as they apply to membership organizations. The Commission's definition of member, however, proved to be elusive despite the Constitutional interests at stake. Consequently, after two years of proceedings, the PSRC consented to limit its solicitation rather than face more years of uncertainty which would have further curtailed the associational rights of its members, and led to additional legal costs.

2. The individual corporation laws of 50 different states cannot dictate the rights and privileges of national citizens' organizations and individuals who exhibit a willingness to associate together to promote the philosophy of those organizations through their support as members. The applicability of § 441b(b)(4)(C) of the Campaign Act is not dependent upon such person being a member under the corporation laws of the state in which the organization is incorporated, but on whether a person adheres to a political philosophy and joins with others to promote that philosophy through his or her support—a standard which embodies the First Amendment right of association.

ARGUMENT

I.

PRELIMINARY STATEMENT OF FIRST AMENDMENT GUARANTEES

Voluntary associations or membership organizations play a vital and significant role in this nation's democratic system and in the preservation of liberty. Membership

organizations provide a vehicle for individuals with common political beliefs to pool their resources and promote that philosophy with the amplified voice of the whole. It remains a basic truism that "[e]ffective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association." *Buckley v. Valeo*, 424 U.S. 1, 15 (1976).

History demonstrates that the right to participate in organizational life can never be taken for granted. James Madison and Alexander Hamilton knew well in 1787-1788 during the debates on the American Constitution "that to elevate individual and group interest into a principle of government would be a novel, if not bold, undertaking." A. Balitzer, *A Nation of Associations: The Origin, Development and Theory of the Political Action Committee*, 27 (1981).

This bold undertaking permitted association life to flourish in America. Alexis de Tocqueville, a notable observer of American associational life, predicted the consequences of stifling such activity:

> In countries where such associations do not exist, if private people do not artificially and temporarily create something like them, I see no other dike to hold back tyranny of whatever sort, and a great nation might with impunity be oppressed by some tiny faction or by a single man.

A. de Tocqueville, *Democracy in America*, Volume I, part 2, chapter 4, noted in A. Balitzer, *supra* at 15. De Tocqueville thus perceptively noted the danger of stifling political associations. He feared the instinctive abhorrence of governments towards associations, especially those who aim "to make some political opinion triumph." *Id.* at Volume II, part 2, chapter 7.

Because of the central role which speech and association play in our form of government, the courts have consistently looked skeptically at government actions which restrict membership organizations. They have warned that the right to associate by adhering to an idea and joining with other adherents in order to advance that idea, is "included in the bundle of First Amendment rights" and requires compelling government interests to justify intrusions. *Louisiana v. N.A.A.C.P.*, 366 U.S. 293, 296 (1961); *see also N.A.A.C.P. v. Button*, 371 U.S. 415 (1963); *N.A.A.C.P. v. Alabama*, 357 U.S. 449 (1958). This freedom to associate is "closely allied to freedom of speech and is a right which, like free speech, lies at the foundations of a free society." *Buckley v. Valeo*, 424 U.S. at 25 (1976).

Associational rights are only meaningful if communication between organizations and persons adhering to their beliefs is not encumbered. Solicitation of members for support of an organization is essential to the life of the entity and, consequently, such solicitations have constitutional significance protected under the First Amendment. *See N.A.A.C.P. v. Button, supra, Village of Schaumberg v. Citizens for a Better Environment*, 444 U.S. 620 (1980).

> The right to join together "for the advancement of beliefs and ideas" is diluted if it does not include the right to pool money through contributions, for funds are often essential if "advocacy" is to be truly or optimally effective.

Buckley, 424 U.S. at 65-66.

Collecting resources is dependent upon the right to communicate with adherents to a viewpoint. Restriction on solicitations "emasculates the guaranteed right of association [for they] disallow political committees from

organizing and focusing the views of their adherents." *Common Cause v. Schmitt*, 512 F. Supp. 489, 497 (D.D.C. 1980), *aff'd* 455 U.S. ___, 71 L. Ed. 2d 20, 102 S. Ct. 1266 (1982). Such a restriction

> reduces the quantity of expression by restricting the number of issues discussed, the depth of their explorations, and size of the audience reached.

Buckley, 424 U.S. at 19.

The form in which these associational rights are exercised cannot control the underlying constitutional rights of association. This Court has sanctioned the use of corporate form as a proper vehicle for political association, *see Buckley*, 424 U.S. at 14; *N.A.A.C.P. v. Alabama*, 357 U.S. at 460.

This *amicus* brief sets forth the frustrating circumstances of one organization's efforts, the PSRC, to solicit contributions from individuals associated with it for the purpose of collecting political contributions. Those contributions provide the means by which members' beliefs are expressed in the political system—through its political action committee, the PSPAC.

II.

THE PSRC AND PSPAC EXPERIENCE IN THE ADMINISTRATIVE AND JUDICIAL PROCEEDINGS BELOW DEMONSTRATES THE FEC'S INABILITY OR UNWILLINGNESS TO FORMULATE AND CONSISTENTLY APPLY A DEFINITION OF MEMBER

The PSRC was formed in 1973 as a nonprofit corporation without stock in the Commonwealth of Virginia to promote a viewpoint on the issue of public sector unionism, and its effect on the functioning of government. On March 15, 1976, the PSRC formed the PSPAC, a separate segregated fund to collect voluntary political

contributions to be directed to federal candidates. In 1976, PSPAC solicited contributions from 133,183 of those individuals recognized as members by PSRC. *See,* MUR 290 (1976), FEC General Counsel's Report 8 (April 8, 1977).

The PSRC operated in 1976 in a period of statutory and regulatory uncertainty in light of this Court's decision in *Buckley v. Valeo,* 424 U.S. 1 (1976), rendered on January 30, 1976. *Buckley* significantly modified major provisions of the Federal Election Campaign Act of 1971, as amended in 1974.

Prior to the issuance of *Buckley,* the NRWC requested an advisory opinion from the Commission on the issue of whether the ERCC could solicit political contributions from active and supporting members of the NRWC. Advisory Opinion Request 1976-6, January 6, 1976 (redesignated A.O. 1976-79). Since the *Buckley* decision held that given the Commission's legislative character, it could not continue to act as an executive agency, the Commission did not issue any advisory opinions until reconstitution of the Commission on May 11, 1976. The NRWC advisory opinion was not issued until April 14, 1978.[2] Presumably, this opinion, if issued earlier, and with an associational rather than state law definition, could have offered guidance to membership organizations on the meaning of the term member under the Campaign Act between May 11, 1976, and April 14, 1978.

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[2] On April 14, 1978, the Commission held that "[s]ince NRWC is precluded by its Articles of Incorporation from having members . . . neither ERCC or NRWC may solicit persons other than the executive or administrative personnel, and their families, of NRWC." *Advisory Opinion* 1976-79, 1 Fed. Elec. Camp. Fin. Guide (CCH) ¶5308 at 10,274.

On October 20, 1976, a complaint was filed by the National Committee for an Effective Congress ("NCEC") against the PSRC, alleging that in violation of § 441b(b)(4)(C), PSPAC solicited political contributions from an impermissible class of persons.[3] The complaint was predicated upon PSRC's Virginia Articles of Incorporation which provided for no corporate members. Since PSRC had no members for corporate law purposes, NCEC contended, PSRC had no members for Campaign Act purposes. In response to subsequent FEC requests for information in addition to that contained in the PSRC Articles, the PSRC informed the FEC that members for purposes of the Campaign Act were considered those individuals recognized for "substantial involvement and support of the Council." *See* MUR 290 (1976), FEC General Counsel's Report 6 (April 8, 1977).

Prior to May 11, 1976, the effective date of the Federal Election Campaign Act Amendments of 1976, no federal statute, rule, regulation, advisory opinion, or executive order which concerned federal elections in any way, referred to members, corporations without capital stock with members, or membership organizations. The 1976 Amendments clarified the right of an incorporated membership organization to form and administer separate segregated funds for political purposes and to solicit voluntary contributions from its members. After May 11, 1976, and during the entire period in which the alleged violations occurred, there was not a federal statute, rule, regulation, executive order, or advisory opinion which in any way defined the term member as used in 2 U.S.C. § 441b(b)(4)(C).

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[3] The complaint was amended on October 21, 1976, to include PSPAC as a named respondent. Also named were the National Right to Work Committee and the Employee Rights Campaign Committee.

Except for a proposed rule defining the term member as "all persons who are currently satisfying the requirements for membership in a membership organization . . . or corporation without capital stock . . .", Proposed Regulation § 100.7(b)(iv), 11 C.F.R. § 114.1(e), the term member was undefined in 1976. The proposed rule did not become final until April 13, 1977.

In reaction to the filing of the complaint, in October 1976, the PSPAC stopped soliciting its members for political contributions. Members of PSRC were deprived of their right to receive communications from and to freely associate with the PSPAC. The resulting depletion of PSPAC's limited resources effectively stifled PSRC's members' voice in the political process.

The PSRC fully believed that its PAC solicitation was lawful and was in compliance with the requirements of membership as delineated in the proposed rule 11 C.F.R. § 114.1(e) and in accordance with the principles of *Buckley v. Valeo, supra, N.A.A.C.P. v. Alabama, supra, N.A.A.C.P. v. Button, supra,* as well as decisions of other federal courts.

Nonetheless, acting out of an abundance of caution in light of the NCEC claim, the PSRC Board of Directors voted to amend its Articles of Incorporation[4] on

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[4] The Eighth Article of the revised PSRC Articles of Incorporation provides in full:

> The corporation shall have members who shall be persons who voluntarily support the purposes of the organization and are accepted as members by the Board of Directors of the Corporation under procedures established by the Board.
>
> No member shall have any voting or property rights, or have, or acquire any vested right, title, or interest in or to the property of this corporation or any vested right in the

[footnote continued]

January 15, 1977, to expressly provide for members in accordance with state law standards. To prevent further curtailment of its association rights, the PSRC in good faith complied with the FEC's requirement. Thus, the PSRC reversed its decision-making process of 1973 by modifying its organizational form in accordance with the law of the Commonwealth of Virginia in order to be absolutely sure of its compliance with the FEC's interpretation both of Virginia state law for nonstock corporations and the Federal Election Campaign Act—regardless of the management ramifications of such a decision.

Nevertheless, on April 21, 1977, the FEC, relying on PSRC's original Articles of Incorporation,[5] followed its General Counsel's recommendation and determined that there was Reasonable Cause to Believe that PSRC and PSPAC violated 2 U.S.C. § 441b(b)(4)(A)(i). The General Counsel, in his April 8, 1977, Report, recognized that he could not provide clear guidance on who was a member for "the legislative history on § 441b(b)(4)(C) is not dispositive of this issue," and the Federal Election Regulations Section 114.1(e) was proposed, but not promulgated. FEC General Counsel's Report at 9-10.

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exercise of any privileges of membership in this Corporation or any vested right in the continuation of any of its purposes, policies or activites.

Every member in good standing shall have the right to receive such privileges as may be prescribed under rules and regulations adopted from time to time by the Board of Directors.

The Board of Directors shall have the sole authority to establish the purposes and goals and direct the activities of the corporation.

[5] The FEC was aware of FSRC's intent to amend its Articles in its April 8, 1977 report. MUR 290 (1976), FEC General Counsel's Report 8 (April 8, 1977).

The General Counsel further recognized "there is no standard definition [of the term member] in the case law." *Id.* at 11. Consequently, the best the General Counsel could set forth was,

> it appears that membership organizations share some combination of the following characteristics: a dues structure, specified terms of membership and a procedure for renewal, and clear rights and privileges of membership such as the right to attend meetings and to participate in the organization's deliberations and decisions.

Id.

Subsequent to the Commission's April 21, 1977, determination involving the PSRC and the NRWC, the NRWC and ERCC sought more precise guidance in the conciliation process on what specific actions were necessary to meet the Commission's requirements for membership. The Commission's General Counsel could only suggest "that in the event that respondents desire to conduct solicitations pursuant to 2 U.S.C. § 441b(b)(4)(C), the National Right to Work Committee shall *amend its articles of incorporation and take all other steps which are necessary and proper to become a memberhsip organization.*" MUR 290 (1976), FEC Final Conciliation Report 2 (September 29, 1977) (emphasis added).

On October 6, 1977, the Commission found probable cause to believe a violation had occurred. It authorized commencement of a civil suit. To pass both the reasonable and probable cause thresholds that a Federal Election Campaign Act violation existed, the Commission applied state corporate law to the PSRC's 1973 Articles of Incorporation. This action was taken in flagrant disregard of PSRC's good faith efforts to comply with

FEC's requirements and with absolutely no acknowledgement of the change of PSRC's Articles of Incorporation to provide for members in accordance with state law.

Consequently, when the Commission decided to seek relief by instituting civil suit, both the PSRC and NRWC were placed in a classic Catch-22 situation by the Commission; both were being sued because they failed to maintain an organizational form in accordance with state law. Both offered to modify their organizational form, with the PSRC formally amending its Articles in January 1977 and the NRWC willing to do so. Yet the only response the FEC would provide was to tell NRWC not only to amend its articles, but to take undefined other steps to become a membership organization.

In the opinion below, Judge Thornberry noted

> [D]uring conciliation, NRWC offered to amend its articles of incorporation, but the FEC conditioned acceptance of that offer on the requirement that NRWC take additional undefined "other steps" to become a membership organization. We are inclined to agree with NRWC that the FEC barricaded itself throughout this litigation behind NRWC's articles of incorporation and has avoided the core problem of defining the terms "member" and "membership organization."

665 F.2d at 374, n. 5. Since the PSRC was no longer in the litigation, Judge Thornberry did not mention the fact that PSRC had already amended its Articles.

By November 28, 1977, the PSRC was in great need of guidance in stemming the ongoing interference of the political rights of its members. In an effort to obtain a reasoned response from the FEC, PSRC submitted, in accordance with 2 U.S.C. § 437f, an Advisory Opinion

Request, attached its *modified* Articles of Incorporation, and formally asked for clarification as to whether the additional steps had been taken to make it a membership organization within the FEC's interpretation of the Campaign Act. The PSRC called the Commission's attention to the fact that "the Council has amended its Articles of Incorporation to acknowledge its members previously recognized based upon their involvement in the activities of the Council." PSRC further advised the FEC that PSRC's members had ceased their political and associational activities due to the fear of penalties for noncompliance. *Advisory Opinion Request* 1977-67 (November 28, 1977) at 2.

"Following issuance of the (NCEC) complaint, PSRC and PSPAC . . . *suspended political communications with their members.*" *Id.* at 2 (emphasis supplied). The Public Service Research Council as of the date of the Advisory Opinion Request had been "inhibited from participating in the political process by the failure of the Commission to issue an Advisory Opinion [defining membership] or state its criteria for membership under the complaint proceeding." *Id.* at 3. A speedy response so as to allow the members of PSRC to resume the exercise of their First Amendment rights of freedom of speech and association was requested. The delayed response of the FEC (discussed *infra*) gave no guidance and showed what little regard the FEC has for these Constitutionally guaranteed rights.

On December 21, 1977, the Federal Election Commission commenced suit against the PSRC and the PSPAC in the U.S. District Court for the District of Columbia.[6]

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[6] The Complaint noted that the "Commission has made repeated attempts to conciliate with defendants PSPAC and PSRC," but that

[footnote continued]

In light of PSRC's efforts to be responsive to the FEC's membership requirements, the form of relief requested from the Court was incomprehensible. The complaint sought to enjoin the PSPAC from prospectively soliciting contributions from its members in connection with a federal election. Ironically, PSRC had already amended its Articles to provide for members. The FEC also sought to have the court assess a civil penalty for a knowing and willful violation of the Federal Election Campaign Act—"$10,000 to 200% of the amount received from contributions in violation of the Act"—when the FEC was well aware that when the complaint was filed, the PSPAC had ceased all solicitations.

It strains the bounds of rational thought to comprehend how the FEC would seek a penalty commensurate with a knowing and willful violation in this case. The fundamental confusion of the state of the law in this area as evidenced by the FEC's General Counsel's April 8, 1977 Report, discussed *supra*, Judge Thornberry's opinion below, *supra*, and *Buckley v. Valeo*, *supra*, makes any knowing violation impossible. Moreover, the documented good faith efforts of the PSRC to seek guidance and direction from the FEC to effect compliance makes any allegation of a "willful" violation patently absurd. These allegations are illustrative of the uncooperative attitude and stonewalling tactics evidenced by the FEC throughout this entire controversy.

"all attempts to conciliate have failed." Complaint, p. 5. The Complaint made no mention of the PSRC's request for guidance on the membership question, through Advisory Opinion Request procedures. It also ignored the modification of the Articles of Incorporation to meet the Commission's vague and unknown definition of membership in accordance with state corporate law standards.

On January 23, 1978, after the PSRC amended its Articles of Incorporation to provide for members, and after the FEC had commenced suit, the FEC requested additional information from the PSRC concerning the identity of its members. This concession that not only did the Commission lack a clear grasp on the definition of the term member under the Federal Election Campaign Act, but did not have an understanding of which members of the PSRC were at issue, did not prevent the Commission from suing PSRC or PSPAC.

A January 19, 1978, public meeting of the FEC was held to discuss the advisability of seeking additional information in regard to PSRC's advisory opinion request. The Commission's inability to articulate the meaning of the term member—which provides the predicate for the NCEC complaint, the Commission's Reasonable and Probable Cause determinations, and its lawsuit—was well documented.

Commissioner Springer: Madam Chairman, may I ask a question?

Chairman Aikens: Mr. Springer.

Commissioner Springer: What is it, do we have a cut and dried definition of membership organization?

Mr. Larry Noble: Not at this point we don't. We know—

Commissioner Springer: Do the regulations cover this?

Mr. Larry Noble: It does cover it in the sense that we know what a membership organization is not.

Commissioner Springer: Is not, but we do not know what one is.

Mr. Larry Noble: That's correct, sir.

Commissioner Springer: Now, are we able, by this letter to see if we can clarify this point. Bill knows this. Shouldn't we be able to say in the Regulations what a membership organization is?

General Counsel Oldaker: The Commission did not. Now I think that the problem is that in any event, we won't have Regulations for at least another, uh, Regulations which have been amended for another four or five months so I think that in the interim this would be the only solution to handle this type of problem.

Joint Appendix, Volume II at 345–6, *Nat. Right to Work Com. v. Fed. Election Com'n,* 665 F.2d 371 (D.C. Cir. 1981).

Clearly, the *FEC itself* had *no definition* for the term member. The fact that the FEC did not know what a member was under the Campaign Act explains why it could not give the PSRC guidance in achieving compliance.

In response to the request for additional information, the PSRC answered that Article Eight members include:

> An individual is substantially involved in the action of PSRC if he voluntarily supports the purpose of the organization by paying dues or responds affirmatively to mailings asking for his opinion on issues of importance to the organization and indicates his willingness to join in the work of PSRC. Membership is not denied because of inability to financially support the organization through dues payments . . . .

PSRC letter to FEC 2 (March 1, 1978). Members participate in PSRC affairs through completing membership

surveys on the issues in which the membership is most interested. The PSRC governing board considers such membership recommendations in determining the organization's activities for the upcoming year. If the PSRC ceases to represent the members' interest, they can withhold financial and activity support. *Id.* at 3-4.

The Commission, in Advisory Opinion 1977-67, issued June 28, 1978, was unable to state whether such PSRC members were in fact members for purposes of the Campaign Act. "On the facts that you initially presented it would be impossible for the Commission to state whether all 1,035,699 of the individuals you claim as members of PSRC are members of the corporation for purposes of the Act." *Advisory Opinion* 1977-67, June 28, 1978, 1 Fed. Elec. Camp. Fin. Guide (CCH) ¶ 5326 at 10,302.

The Commission's then promulgated definition of member was contained in 11 C.F.R. § 114.1(e). PSRC had satisfied the requirements of that regulation. The Commission later added a new requirement—"a person can only be considered a member of an organization if he or she knowingly has taken some affirmative steps to become a member of the organization." *Id.*

> In each instance where members do not have direct and enforceable participatory rights in the organization—*such as those held by a shareholder or union member*—facts must be examined before a determination can be made that a membership relationship exists.

Id. (emphasis added).

The PSRC supplemented its original request in an attempt to obtain an opinion with regard to the solicitability of a portion of the persons PSRC considered members:

These persons have the following rights and obligations:

(a) they have affirmatively expressed a specific and unambiguous desire to become, or join as, a member of PSRC by either writing to the organization or returning a card or notice which evidences a specific and unambiguous desire to accept membership;

(b) they are given the right and opportunity to participate in a membership opinion survey conducted at least yearly and the results of which are taken into consideration by the governing board;

(c) they must pay dues or contributions to the organization at regular intervals (though the President of PSRC has the authority to waive the dues or contributions requirement for individuals when it is in the interest of the organization); and

(d) their membership status in the organization must be renewed by them at periodic intervals.

See, PSRC letter to FEC (May 19, 1978). Once again, this meant severely curtailing political communications with the PSRC members not falling within the above confines pending a resolution of the entire controversy.

The Commission found "sufficient indicia of a membership relationship" exists for these people to be solicited pursuant to 2 U.S.C. § 441b(b)(4)(C), but imposed two additional requirements. There must be a predetermined minimum amount for dues, and dues may only be waived if based upon predetermined criteria. *Advisory Opinion* 1977-67 (CCH) ¶ 5326 at 10,302.

It is clear that the FEC—throughout its interaction with the PSRC and PSPAC in the underlying action—was unwilling or unable to rationally find a definition of the term member consistent with the Constitutional interest at issue.

III.

ANY APPLICATION OF STATE CORPORATION LAW DEFINITIONS TO THE TERM MEMBER UNDER THE CAMPAIGN ACT WOULD BE INCONSISTENT WITH THE PROTECTED FIRST AMENDMENT RIGHTS AT ISSUE

Political activities of organizations are regulated by the Federal Election Campaign Act of 1971, as amended, codified in 2 U.S.C. § 431 *et seq.*, and the regulations promulgated thereunder, 11 C.F.R. § 100 *et seq.*

For reasons totally unrelated to the Campaign Act and the Constitutional interests at issue, the PSRC, as are most similar organizations, is incorporated. This corporate stature brings such organizations within the ambit of 2 U.S.C. § 441b in regard to the regulation of their political activities.

Section 441b prohibits all incorporated entities – whether business or nonprofit, economic or ideological – from making a contribution or expenditure in connection with a federal election. An exception to this otherwise absolute bar on direct corporate political action[7] is the privilege of corporations to form and operate a separate segregated fund to be used for political purposes. 2 U.S.C. § 441b(b)(2)(C). These funds are commonly referred to as political action committees or PACs.

Participation and solicitation is limited in a PAC formed by a membership organization which is a non-stock corporation for state corporate law purposes to

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[7] The other two exceptions are intraorganizational communications and nonpartisan registration and get-out-the-vote campaigns, 2 U.S.C. § 441b(b)(2)(A) and (B) respectively, neither of which is at issue here.

members. Section 441b(b)(4)(C).[8] The Act, however, does not specifically define the meaning of the term member for purposes of the Campaign Act. The Federal Election Regulations, 11 C.F.R. § 114.1(e), as previously stated, define the term member to include simply "all persons who are currently satisfying the requirements for membership in a membership organization . . . ."

Before the Court is the proposition that for a person to be considered a member of a nonstock corporation for purposes of § 441b(b)(4)(C), such a person must be a member under the corporation law of the state in which the corporation is incorporated.[9]

The Commission position is that to come within the ambit of § 441b(b)(4)(C), the incorporated membership organization's charter cannot preclude it from having members.[10] Alternatively, if the Articles provide for members, other evidence of a membership relationship must be present. *Advisory Opinion* 1977-67 (CCH) ¶ 5326 at 10,302. As Judge Thornberry in the decision

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[8] PACs formed by business corporations are, instead, limited to shareholders and their families and executive or administrative personnel and their families, while labor organizations are limited to soliciting their members and their families. 2 U.S.C. § 441b(b)(4)(A).

[9] Amicus AFL-CIO now urges this Court to adopt a state corporation law standard as the threshold test of member, and suggests additional requirements. This would make the constantly changing state definition partially determinative of the federal definition.

[10] Judge Thornberry remarked in the Court's opinion below, "further, we are troubled by the fact that the FEC considers the articles of incorporation dispositive only if they negate members for purposes of state law, but not if the articles provide for members." 665 F.2d at 374.

below indicates, this alternative requirement is in reality a position that state law controls the definition of member under the Campaign Act for state law sets forth the requirements of membership and that which must be contained in the charter. *Nat. Right to Work Com.*, 665 F.2d at 373.[11]

The Commission has thus offered only an elusive "standard" for organizations to follow in establishing or revising their membership structure in order to enjoy the exemption clearly intended by Congress and guaranteed by the First Amendment. It has offered a chameleon "standard" which changes its color depending on the state whose corporation law is being employed. In contrast, Congress desired a broad, uniform standard, and the First Amendment requires one.

The application of a state law standard, in any form, however, is a proposition the Court below categorically rejected. It explained:

> We see absolutely no justification for applying a state law standard. State definitions of "members" in nonstock corporations for purposes of state corporate or tax laws are not likely to take into account important First Amendment considerations

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[11] The Commission overlooks the control of state corporate law, not general principles of corporate law, on an organization's charter vis-a-vis the membership question in denying it is applying state law when it states:

> But it is a fundamental principle of corporate law that the corporate charter defines the character of the corporation and the limits of its powers. It is for this reason that the Commission looks first to the corporation's charter itself, not to state law, to determine whether the corporation has empowered itself to operate as a membership organization.

Brief for Petitioners at 42-43, *FEC v. NRWC, cert. granted* (No. 81-1506).

> at the heart of any controversy surrounding the construction of application of the Federal Election Campaign Act.

Nat. Right to Work Com., 665 F.2d at 374.

The use of state law standards clearly marries two separate and distinct concepts, each with different underlying public policies: state corporation law and federal limitations on solicitation rights of nonprofit, incorporated public policy oriented associations. In so doing, the crossover interpretations involved on applying corporate law standards to ideological organizations unconstitutionally infringe upon First Amendment rights of association and speech.

A. A Uniform Definition Affecting Associational Rights Is Impossible With Use Of A State Corporation Law Standard

The corporate stature has become the most prevalent structure for nonprofit associations, as well as commercial enterprises. G. Webster, *The Law of Associations*, § 2.02[i][a]. The reasons for such decisions include:

a. Liability shelter against individual financial responsibility for officers and directors;

b. Perpetuity of organizational existence; and

c. Administrative centralization of control and management.

Webster, *supra*. On the other hand, motivation to expand political solicitation and contribution rights plays no role in the decision to incorporate.

The nonstock and nonprofit corporation laws of the 50 states differ significantly in provisions permitting, defining and affecting members of such nonprofit corporations. More importantly, the burdens placed on such

organizations differ drastically and, among other things, can affect the decision of whether to have members or the selection of the state in which to incorporate.

Some state corporation laws, for example, have minimal requirements for nonstock corporations and reference no obligations for members. *See, e.g.*, Md. Corps. & Ass'ns Code Ann. § 5-201 *et seq.* (1971); Okla. Stat. Ann. tit. 18 § 864 (1975); and N.H. Rev. Stat. Ann. § 292:1 *et seq.* (1969). Others attach substantial and precise essentials for membership status. *See, e.g.*, Conn. Gen. Stat. § 33-458 *et seq.* (1959).

Moreover, most states, including those with restrictive requirements as to who are members of nonstock corporations, allow the creation of different types or classes of members, each with different rights, privileges and qualifications. *See, e.g.*, Va. Code § 13.1-211 (1978); D.C. Code Ann. § 29-512 (1981); and Md. Corps. & Ass'ns Code Ann. § 5-202 (1975).

The use of a state corporate law definition, in essence, would delegate to state legislators the ability to define federal political rights of organizations and their members and to confine federal constitutional guarantees. Moreover, the result would be chaos when the FEC attempted to interpret and apply numerous and diverse state laws.

Thus, the use of a state law standard would result in at least 50 different standards being applied by a federal agency wholly lacking experience in interpreting and applying the particular state standard purportedly applicable to the corporation at issue. That function is generally reserved to state corporation commissions and attorneys general. In fact, the Virginia Corporation

Commission has already passed favorably on PSRC's Articles.

No such delegation was ever contemplated by Congress when it passed the Campaign Act. The employment of state statutes designed for tax, commercial, banking investment and liability purposes has no place where the question is federal election campaign contributions and the solicitation of contributions from the body of the corporation.

Any application of state law standards as delineating membership rights under the Campaign Act would require, without justification, the sacrifice of the liability, perpetuity and administrative factors used in making the corporate or unincorporated association decision. This clearly would be an unintended, and unfortunate effect.

In fact, to prevent having to forego liability protection, the Federal Election Regulations provide a political committee can incorporate itself and would not *ipso facto* be bound by the § 441b prohibitions. *See* 11 C.F.R. § 114.12(a). Consequently, even a political committee can use the positive attributes of incorporated form.

As previously discussed, the amended Act does not define the term member, and the regulations simply adopt as the test the standards established by the organization, with the caveat that membership requirements may not consist solely of the requirement that one contribute to the separate segregated fund. The interpretational problem should be resolved by use of the Court of Appeals well-reasoned standard of political affinity of the individual to the group, rather than the preposterous proposition of state corporation law.

B. The Statute At Issue Cannot Be Converted By State Law Concepts To Limit Activities Of Membership Organization PACs, Such As The PSPAC

The purpose of the Campaign Act is so disjointed from the coverage asserted by petitioners, that their state corporation law position cannot prevail. Nonstock ideological corporations such as PSRC simply cannot be compared with common business corporations, national banks, and labor unions in order to have their political activities impaired through application of state laws.

The statute has two basic underlying public policies, neither of which is advanced by limiting political activities of a nonstock corporation formed to promote ideological beliefs. It was first intended to ensure that the large aggregation of wealth which business corporations and labor unions have been able to accumulate with the aid of special legal protections intended to serve other purposes, could not be converted into political "war chests" which could be used to incur political debts from legislators and officials they helped elect. *See, United States v. International Union*, 352 U.S. 567, 579 (1957), and *NLRB v. Allis-Chalmers Manufacturing Co.*, 388 U.S. 175, 180-182 (1967).

The second purpose was to protect the individuals who have paid money into a corporation or union for other than political purposes, from having that money used for political purposes contrary to their own ideals. *United States v. Congress of Industrial Organizations*, 335 U.S. 106, 113 (1948). Neither of these dual purposes would be served if the forced, state corporation law interpretations were employed to confine solicitation and contribution activities of membership corporations

organized solely for such ideological purposes. *Nat. Right to Work Com.*, 665 F.2d at 375.

While the 1976 amendments of the Act did address the issue of nonstock membership corporations, it is evident that Congress was not intending to limit the activities of policy oriented, nonstock corporations to solicit individuals adhering to a common belief.

Indeed, the intention was to clarify and ensure that nonstock corporations could enjoy the same exemption from contribution and expenditure limitations earlier made applicable to banks, commercial corporations and labor unions. For example, during debate on the floor of the Senate, Senator Allen explained that it was intended to allow membership of nonstock corporations such as local Rural Electric Associations to set up separate funds and solicit contributions to that separate fund from members of the REA. 122 Cong. Rec. S. 7197 (daily ed. March 18, 1976).

Congress did not limit the term members in any way but instead left the definition all-inclusive so that any type member of a nonstock corporation could be solicited for contributions without violation of 2 U.S.C. § 441b. In fact, during a later debate on the amendment, Senator Cannon, in response to questions as to how broad the membership solicitation exemption was, responded, "Any type of an organization that has members, though not categorized as stockholders, and so on, would be covered under the provision . . . . They could solicit at any time, just as a corporation and its separate segregated fund can solicit certain classes at any time, and a labor union can solicit its members at any time." 122 Cong. Rec. S. 6478 (daily ed. May 2, 1976). Public policy oriented organizations, which are entirely ideological entities engaged in nonpartisan research and education

concerning public issues, such as the PSRC, do not amass wealth from unrelated areas for later use as political leverage.

Consequently, as indicated by the FEC there is no need to "assure that the source of the funds which support those voices is the individuals who comprise the organizations, not the operating funds of the organizations which are accumulated for other purposes." Brief of Petitioners at 14–15. All funds are accumulated solely for the ideological purpose. Similarly, PSRC and PSPAC do not have the type of employees, shareholders or members who could be coerced or intimidated into supporting political ideas which they do not espouse. Instead, the members of these organizations voluntarily donate money for the precise ideological purpose which forms the basis of their existence. State corporation laws cannot be employed to shackle this protected activity.

CONCLUSION

The PSRC and PSPAC have lived through a tortuous experience with the Federal Election Commission in the underlying administrative and judicial action and its aftermath.

After the NCEC administrative action was filed claiming PSRC had no members for Campaign Act purposes, the PSRC amended its Articles to provide for members. This, it was believed, would meet the Commission's requirements for members solicitable under the Act.

Despite the revision of the Articles, the Commission, who later admitted in a public meeting that it did not have a clear understanding of the meaning of the term

member, found probable cause to believe PSRC had violated section 441b of the Campaign Act which limits the solicitation rights of an incorporated membership organization to its members.

The Commission sued the PSRC and PSPAC and thereafter conceded it did not really understand the membership structure of PSRC, when it had to request additional information about PSRC's members before it could issue an advisory opinion previously requested by the PSRC. The advisory opinion that ultimately issued, about two years after the NCEC complaint, held the amended articles, by themselves, insufficient to evidence a membership relation for PSRC members. The FEC, instead, in a vague manner, stated other indicia of membership were required.

The Commission's unwillingness or inability to delineate the term member is not surprising in light of its misplaced reliance on the articles of incorporation of membership organizations in determining an organization's members. State law can play no part of the definition of a term imbued with federal substantive and constitutional rights. State corporate laws vary throughout the fifty states, and a uniform federal definition recognizing the constitutional rights at issue is required.

For the foregoing reasons, the PSRC and PSPAC respectfully request that this Court find state corporate law inapplicable to the definition of solicitable member under the Federal Election Campaign Act of 1971, as amended, and that this Court adopt Judge Thornberry's definition of membership in the opinion below to include "those individuals who share a similar political philosophy and who have evidenced a willingness to promote

that philosophy through support of the [membership organization] . . . ." 665 F.2d at 376.

Respectfully submitted,

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August 23, 1982

Docket Sheet

NO. 81-1506-CFX See: 82-284	TITLE Federal Election Commission, et al., Petitioners v. National Right to Work Committee, et al.

DOCKETED	COURT
Feb. 10, 1982	United States Court of Appeals for the District of Columbia Circuit

DATE	PROCEEDINGS AND ORDERS
	Counsel for Petitioners: Charles N. Steele
	Counsel for Respondents: Solicitor General, Richard Harvey Mansfield III,
Feb. 10, 1982	Petition for writ of certiorari filed. (Record filed)
Mar. 12, 1982	Brief for respondents National Right to Work Committee, et al. in opposition filed.
March 17, 1982	DISTRIBUTED. 4-2.
Apr. 5, 1982	Petition GRANTED.

Apr. 30, 1982	Order extending time to file the joint appendix and petitioners' brief on the merits until June 21, 1982.
June 21, 1982	Joint appendix filed.
June 21, 1982	Brief for the petitioners filed.
June 23, 1982	Motion of American Federation of Labor and Congress of Industrial Organizations for leave to file a brief as amicus curiae filed.
July 7, 1982	Order extending time to file the respondent's brief on the merits until Aug. 23, 1982.
Aug. 23, 1982	Brief for respondents' Natl. Right to Work Committee, et al. filed.
Aug. 23, 1982	Brief, amicus curiae, for the Public Service Research Council and Public Service Political Action Committee filed.
Sept. 9, 1982	The motion of American Federation of Labor and Congress of Industrial Organizations for leave to file a brief as amicus curiae is GRANTED.
Sept. 15, 1982	CIRCULATED.
Oct. 25, 1982	Reply brief for the petitioners filed. (D).
Nov. 1, 1982	ARGUED.